NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued May 18, 2023
Decided July 5, 2023

Before

DIANE P. WOOD, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2517

SHANICE CURRIE,
Plaintiff-Appellant,

v.

STATE AUTO PROPERTY & CASUALTY INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 2:20-cv-1342

Lynn S. Adelman,
Judge.

O R D E R

Shanice Currie has a homeowners insurance policy with State Auto Property & Casualty Insurance Company (State Auto). After two fires severely damaged her duplex in Milwaukee, Currie sought payment from State Auto. State Auto denied the request for coverage, claiming that the duplex was not a "residence," and therefore was not covered by the policy. Currie sued State Auto for breach of contract. The district court granted summary judgment to State Auto, holding that the homeowners insurance policy did not cover Currie's loss. We affirm.

I. Background

Currie purchased the previously abandoned duplex (the Property) from the City of Milwaukee in the spring of 2018. She proceeded to install electricity and fill the bedroom with a dresser, mirror, clothing, and a bed. Still, the property had no running water, kitchen appliances, no chairs or sofas in the living room, or a front door. Where a door should be, there was a wooden board that Currie would have to unscrew to enter the Property. Strangers came and went and Currie took no action to eject them. Apart from sleeping at the Property two or three nights per month, Currie did not stay there. She bathed, prepared meals, kept personal belongings, and received mail at her two other addresses in Milwaukee.

The homeowners policy Currie purchased from State Auto for the Property covered "residence premises," which the policy defined as:

> The two-, three-, or four-family dwelling where you reside in at least one of the family units . . . on the inception date of the policy period shown in the Declarations and which is shown as the "residence premises" in the Declarations.

Because the policy's inception date was September 15, 2018, Currie needed to reside in one of the units on the Property on that date for coverage to attach.

On October 31 and on November 2, 2018, fires broke out at the Property, causing extensive damage. Currie informed State Auto that the Property was a total loss and sought full replacement value. State Auto denied Currie's claim, explaining that the Property was never her residence.

Currie sued State Auto for breach of contract. The district court, sitting in diversity, granted State Auto's motion for summary judgment. The court held that, while the operative clause in the policy—"the dwelling where you reside"—was ambiguous, "[a] reasonable person would, nevertheless, understand the clause to require plaintiff to maintain and use the [Property] as a home, even if it was only one residence among many." Given Currie's lack of legal and practical ties to the Property, the district court found that a jury could not reasonably conclude that Currie resided there.

Currie now appeals, arguing that the Property was her residence on the policy's inception date, and that the district court erred in its application of Wisconsin law.

II. Discussion

We review a grant of summary judgment de novo, drawing all reasonable inferences in favor of the non-moving party. *Johnson v. Dominguez*, 5 F.4th 818, 824 (7th Cir. 2021). As insurance contract disputes are matters of state law, this Court, sitting in diversity, must apply Wisconsin law. *See, e.g.*, *Std. Mut. Ins. Co. v. Bailey*, 868 F.2d 893, 896 (7th Cir. 1989) ("[W]e are faced with the task of attempting to rule in this case according to [Wisconsin] law as we believe the [Wisconsin] courts would probably resolve it."). Whether the Property was covered by the policy is a question of law. *Danbeck v. Am. Fam. Mut. Ins. Co.*, 629 N.W.2d 150, 153 (Wis. 2001).

Looking to Wisconsin law, there is no statutory definition of "residence" or "dwelling" with respect to homeowners insurance coverage. *See Drangstveit v. Auto-Owners Ins. Co.*, 536 N.W.2d 189, 191 (Wis. Ct. App. 1995) ("Because neither 'occupied' nor 'dwelling' are technical terms, we may ascertain their meanings by reference to recognized dictionaries."). Therefore, the district court needed to give these terms definitions consistent with their "common, ordinary meaning[s], that is, what the reasonable person in the position of the insured would have understood the words to mean." *Folkman v. Quamme*, 665 N.W.2d 857, 865 (Wis. 2003) (internal quotation marks and citation omitted). The district court did so, reasoning that an ordinary person would understand these terms to mean a property that is maintained and used as a home. Because Currie did not use the Property in this manner, the court found that no reasonable jury could conclude that she resided there.

Currie disagrees. Citing *Thorne v. Member Select Insurance Co.*, 882 F.3d 642, 644 (7th Cir. 2018), she argues that the court should have instead applied three factors to determine what qualifies as a residence: (1) physical presence at the property; (2) subjective intent to reside there; and (3) unfettered access to the property and its contents. *Thorne*, however, applied Indiana law. Currie offers no proof that any Wisconsin court has even considered the three-part test explained therein, much less adopted it as the state's substantive law. Thus, the district court properly concluded that *Thorne* does not control. *Std. Mut.*, 868 F.2d at 896.

Currie next argues that Wisconsin law defines a residence as "the concurrence of intention and personal presence" at a dwelling. She further asserts that Wisconsin law

requires physical presence at a property only on the policy's inception date and that "the continued personal presence thereafter is not essential to continuous residence." Because Currie waited until her reply brief to raise these arguments, they are waived. *See White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021).

Even if they were not, the district court correctly concluded that Currie did not "actually live" at the Property, on the inception date or at any other time, thus it was not her residence. This remains true under Currie's "presence plus intent" standard. Currie was personally present at the Property only two to three nights per month and, even on those occasions, her use of the space did not evidence an intent to reside there. Even though Currie had access to kitchen appliances, utensils, cooking equipment, sofas, and chairs, she did not store any of these items at the Property. In addition, Currie did not bathe or cook at the Property; nor could she—her kitchen and bathroom were not functional. This address was not listed on her driver's license, and her mail was sent to a different location. Most telling, the Property was unsecure without a door and Currie made no effort to prevent strangers from sleeping there.

Finally, Currie presents no evidence that she was at the Property specifically on September 15, 2018. Thus, even if the Court were to agree with Currie that residence requires a property owner's physical presence only on the policy's inception date, her appeal still fails.

As a matter of law, Currie's Property was not a residence on the policy's inception date or any time before or after. Thus, it was not covered by the insurance policy, and the district court's grant of summary judgment to State Auto was proper.

AFFIRMED