IN THE COURT OF APPEALS OF IOWA

No. 3-139 / 12-1181
Filed May 15, 2013

LIFELINE MINISTRIES CHURCH,
Plaintiff-Appellant,

vs.

CHURCH MUTUAL INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Stephen B. Jackson Jr., Judge.

An insured contends that the jury's answers on a special verdict form were inconsistent and that it is therefore entitled to a new trial. **REVERSED AND REMANDED.**

William H. Roemerman and Stephanie A. Legislador of Crawford, Sullivan, Read & Roerman, P.C., Cedar Rapids, for appellant.

Robert B. McMonagle of Lane & Waterman, Davenport, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

A church sought coverage from its insurer for damage sustained during a flood. Following a two-part jury/court trial, the insurer prevailed. On appeal, the church raises several arguments in support of reversal, including a contention that the jury's answers to special verdict questions were inconsistent. We find that issue dispositive, but also address the district court's construction of the insurance policy.

I. Background Facts and Proceedings

Lifeline Ministries Church in Cedar Rapids had property insurance, but not flood insurance, through its insurer, Church Mutual Insurance Company. In 2008, the Cedar River overflowed its banks and inundated the City of Cedar Rapids. Several hours before the surface waters reached the church, the sewer backed up into the church basement.

Lifeline sought coverage from Church Mutual for losses resulting from the sewer backup. When the company denied coverage, Lifeline sued for breach of contract. Both parties filed partial motions for summary judgment. The district court denied Church Mutual's motion as untimely and denied Lifeline's motion on the ground that "reasonable minds could draw different inferences and reach different conclusions . . . with regard to the question of whether [Lifeline's] damages resulted from a sewer backup." The court declined to immediately rule on the applicability of a policy exclusion, stating, "These fact issues impact the Court's construction of the policy language. Once the cause of [Lifeline's] damages has been determined by the trier of fact, the Court can, as a matter of law, determine whether exclusions relied on by [Church Mutual] apply."

The case proceeded to a jury trial. The jury completed a special verdict form, as follows:

> Question No. 1: Did Lifeline prove that there was sewer back up that invaded its property through sewers or drains?
> Answer "yes" or "no."
> ANSWER: YES
> [If your answer is "no," do not answer any further questions.]
> [If you answer is "yes," you must answer Questions 2, 3, 4 and 5 below.]
> Question No. 2: Did Lifeline prove that the sewer back up was caused by an event away from its property?
> Answer "yes" or "no."
> ANSWER: YES
> Question No. 3: Did Church Mutual prove that the sole cause of the damage to Lifeline's property was flood, surface water, or overflow of any body of water?
> Answer "yes" or "no."
> ANSWER: YES
> Question No. 4: Did Church Mutual prove that the sewer backup entered Lifeline's building through foundations, walls, floors, windows, cracks, roofs, or other opening of the buildings?
> Answer "yes" or "no."
> ANSWER: NO
> Question No. 5: State the amount of damages sustained by Lifeline caused by backup of water or sewage through sewers or drains.
> TOTAL: $240,299.27

The district court accepted the verdict form and directed the clerk of court to enter it of record.

Both parties argued their respective positions on construction of the policy language. Lifeline also moved for a new trial on the ground that the jury's answer to question 3 was inconsistent with its answer to question 5.

The court concluded: (1) the policy unambiguously excluded coverage for sewer backups caused by flood, surface water, or overflow of any body of water; (2) the jury found the sole cause of Lifeline's damage was flood, surface water, or overflow of any body of water; and (3) Lifeline had no coverage for the sewer

backup damages. The court rejected Lifeline's argument that the jury's answers to the special verdict questions were inconsistent, finding that the amount of damages specified in response to question 5 was contingent on a court ruling in favor of Lifeline. Accordingly, the court denied Lifeline's new trial motion and entered judgment in favor of Church Mutual. This appeal followed.

II. Analysis

A. *Policy*

The relevant policy language is as follows:

> **EXCLUSIONS**
> *We will not pay for loss or damage caused directly or indirectly by* any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
> . . . .
> 7. Water.
> a. *Flood*, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
> . . . .
> **ADDITIONAL COVERAGE—BACK UP THROUGH SEWERS AND DRAINS**
> Subject to all other terms and conditions of this policy, we will pay for direct physical loss or damage to Covered Property *caused by back up of water or sewage through sewers or drains only if caused by an event away from the described buildings and when the damage is not caused by flood*, *surface water*, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not, *and which did not enter the building through foundations*, *walls*, *floors*, *windows*, *cracks*, *roofs*, *or through other opening of the building*.
>
> *Sewer or water damage occurring as a result of*, *either before or after*, *the excluded flood*, *surface water*, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not, *and entering the building through foundations*, *walls*, *floors*, *windows*, *cracks*, *roofs*, *or through other openings of the building is not covered*.

(Emphasis added.) The parties begin with the specific provision on sewer backups. They agree this language provides for sewage backup coverage only if (1) the event that caused the backup was away from the covered building and (2) the substance did not enter the building "through foundations, walls, floors, windows, cracks, roofs, or through other opening of the building." They disagree on the meaning of the third condition: "when the damage is not caused by flood, surface water" or other water overflow. Lifeline argues this language "looks to the 'direct' cause of the damage." In its view, "[i]f a sewer back up caused the damage, there is coverage" and "[a] claim is excluded only when the **damage** occurs as a result of flood." Church Mutual counters that it is not enough under the policy to find a sewer backup that caused damage. If that were the case, it argues, the three conditions, including the requirement that damage was not caused by flood, would be meaningless.

The district court construed the policy language as follows:

> [T]he policy terms are not ambiguous, and the clear and unambiguous exclusion in the policy must be given effect. The policy language is clear that water or sewage back up that enters the property due to an event away from the covered property is not covered if the water or sewage back up was caused by flood, surface water, or the overflow of any body of water. The policy language cannot be reasonably read in any other way. The provision of the policy pertaining to sewer back up coverage simply reinforces that coverage is not provided for damage resulting from flood, surface water, or overflow of any body of water that enters the building through foundations, walls, floors, windows, cracks, roofs, or through other opening of the building. The policy is consistent in its exclusion of coverage for this type of damage.

We discern no error in the court's construction. *See Postell v. Am. Family Mut. Ins. Co.*, 823 N.W.2d 35, 41 (Iowa 2012) (reviewing construction of policy for errors at law). The policy plainly covers "damage to Covered Property caused

by back up of water or sewage through sewers or drains only . . . when the damage is not caused by flood." The policy reiterates "[s]ewer or water damage occurring as a result of, either before or after, the excluded flood . . . is not covered." And, in its general exclusion section, the policy separately excludes "loss or damage caused directly or indirectly by . . . flood."[1]

The only remaining question is a factual one: whether the cause of the damage to Lifeline's basement was the flood. The district court left it to the jury to answer this question. This brings us to Lifeline's contention that the jury's answer was internally inconsistent with another answer.

B. Inconsistency of Jury Answers

As noted at the outset, question 3 asked, "Did Church Mutual prove that the sole cause of the damage to Lifeline's property was flood, surface water, or overflow of any body of water?" The jury's answer was, "YES." Lifeline contends the jury's answer was inconsistent with its separate finding in response to question 5 that Lifeline sustained damages of $240,299.27. It argues, in part, that if the jury truly believed the sole cause of the damage to Lifeline's property was flood, surface water, or overflow from a body of water, the jury would have assessed damages of $0. In its view, the inconsistency mandated a new trial. Our review of a district court's conclusion as to whether answers are inconsistent

[1] At trial, and again on appeal, Lifeline argues that its reasonable expectations were frustrated by the insurer's decision to deny coverage for the sewer backup damages. The reasonable expectations doctrine "'can only be invoked [when] an exclusion (1) is bizarre or oppressive, (2) eviscerates terms explicitly agreed to, or (3) eliminates the dominant purpose of the transaction.'" *Am. Family Mut. Ins. Co. v. Corrigan*, 697 N.W.2d 108, 118 (Iowa 2005) (quoting *Essex Ins. Co. v. The Fieldhouse, Inc.*, 506 N.W.2d 772, 777 (Iowa 1993)); *accord Postell*, 823 N.W.2d at 47–48. We agree with the district court that the reasonable expectations doctrine was inapplicable.

is for correction of errors at law. *Clinton Physical Therapy Servs*., *P.C*. *v*. *John Deere Health Care*, *Inc*., 714 N.W.2d 603, 609 (Iowa 2006).

Iowa Rule of Civil Procedure 1.933 allows a court to "submit [to the jury] in writing questions susceptible of categorical or brief answers." These questions are known as special verdicts and "should be distinguished from jury interrogatories which may appropriately be used in connection with a general verdict." *McConnell v*. *Aluminum Co*. *of Am.*, 367 N.W.2d 245, 246 n.1 (Iowa 1985).

"A special verdict consists entirely of questions that elicit special written answers to resolve the material issues of fact in the case, and the court then enters judgment based on the findings made by the jury." *Clinton Physical Therapy Servs*., 714 N.W.2d at 610. The answers to the questions "must be internally consistent." *Id.* at 612 (noting that rule 1.933 is read in tandem with rule 1.934 governing special interrogatories supplementing general verdicts, which specifically addresses inconsistent answers). If they are not consistent, "the court must either resume deliberations or grant a new trial." *Id.* at 613.

"[T]he process of determining whether answers are inconsistent focuses on the evidence and the law, and the court must decide if the two answers at issue can be harmonized in light of the evidence and the law." *Id.* "When, under this analysis, two answers or findings by the jury would compel the rendition of different judgments, the answers are inconsistent." *Id.* The "process of determining whether answers are inconsistent by attempting to harmonize the answers with the evidence and the law is separate from the process of reconciling two answers determined to be inconsistent." *Id.* at 613–14.

We begin with what the jury was told. The district court provided the jury with a general statement of the case as follows:

> In this case, the Defendant, Church Mutual Insurance Company ("Church Mutual"), sold a policy of insurance to Lifeline Ministries Church ("Lifeline"). On June 11 and 12, 2008, Lifeline suffered a loss.
>
> Lifeline claims that the loss falls within coverage language of the policy and seeks payment for the value of the loss.
>
> Church Mutual denies that Lifeline's loss falls within the policy's covering language. It also affirmatively claims that the policy's exclusion language defeats coverage.
>
> Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

The court proceeded to instruct the jury on several matters, including Church Mutual's assertion that the policy's exclusion language defeated coverage.[2] The instruction on this defense was as follows:

> Church Mutual claims the sole cause of Lifeline's damages was flood, surface water, or overflow of any body of water. Sole cause means the only cause. Church Mutual must prove the following proposition:
>
> The invasion of flood, surface water, or overflow of any body of water was the only cause of Lifeline's damage.
>
> If Church Mutual has failed to prove this proposition, Church Mutual has failed to prove the defense of sole cause. *If Church Mutual has proved this proposition*, *Church Mutual has proved the defense of sole cause*.

(Emphasis added.) There were also instructions on damages, none of which stated that an assessment of damages would be provisional.

[2] The court declined to define "flood" and other terms for the jury, as Lifeline requested, stating, "[T]he issue in this case isn't whether there was a flood or sewer backup. The issue is were the damages caused by one, or both, or a combination of those two things." We discern no error in this ruling. *See Pexa v. Auto Owners Ins. Co.,* 686 N.W.2d 150, 160 (Iowa 2004) (reviewing a challenge to a district court's refusal to give an instruction for errors of law).

Presumably relying on these instructions,[3] the jury found that Church Mutual proved the flood was the sole cause of the damage to Lifeline's property. Despite this finding favoring Church Mutual, the jury assessed damages in favor of Lifeline. Each answer compelled the rendition of a different judgment, the first in favor of Church Mutual, the second in favor of Lifeline.

The district court relied on the first answer in ruling for Church Mutual on the coverage issue:

> Because Defendant proved that the sole cause of the damage to Plaintiff's property was flood, surface water, or overflow of any body of water (evidenced by the jury's answer to Question 3), Plaintiff did not have coverage for the damage at issue in this case, and judgment should be entered in favor of Defendant.

The court attempted to harmonize that answer with the jury's finding of damages as follows:

> The submission of Question 5 to the jury was done simply to ensure that a damages determination was made in the event that it is appropriate to award Plaintiff damages based upon the jury's answer to the balance of the verdict questions or based upon the ruling as to Plaintiff's other claims for relief. There is no question that Plaintiff suffered damage to its property, and the jury placed a value on that damage. The question for the Court is, however, whether that damage is covered under the policy. It is not. Because (based on the jury's answer to Question 3) the conditions precedent to coverage were not satisfied, Plaintiff is not entitled to coverage.

While we see the logic in the court's reasoning, we are convinced the effort to reconcile the two answers "necessarily involved some degree of speculation." *Clinton Physical*, 714 N.W.2d at 614. The district court could not know whether the jury (1) understood that a "yes" answer to question 3 precluded an award of

[3] A jury is presumed to follow the law as contained in the jury instructions. *State v. Piper*, 663 N.W.2d 894, 915 (Iowa 2003).

damages and simply entered a provisional damage figure should the court find in favor of Lifeline or (2) found that Lifeline sustained damages and simply misunderstood question 3. Had the special verdict form included an instruction to skip the damage question if the answer to question 3 was "yes," an inconsistency might have been avoided.[4] *See* Iowa R. Civ. P. 1.933 (requiring a court using special verdict procedure to "so instruct the jury as to enable it to find upon each issue submitted"); *McConnell*, 367 N.W.2d at 247 (noting that special verdicts included the following instruction, "If you have answered 'yes' to Interrogatory No. 1 and Interrogatory No. 2 or to Interrogatory No. 3 and Interrogatory No. 4, or to all four of such interrogatories, you should proceed to determine the amount of damages sustained by the plaintiffs").[5] As it stood, the answers to the two questions were facially inconsistent.

In reaching this conclusion, we have considered Church Mutual's contention that the jury's role was limited. We agree with its assertion that "the sole function of the [special verdicts] here was to help the District Court determine whether the three conditions precedent for sewer back up coverage existed." But the fact that the ultimate decision on coverage rested with the court rather than the jury did not obviate the need to have consistent answers from the

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[4] That type of direction was included after question 1.

[5] We acknowledge that the jury did not need to know the ultimate purpose of the questions it was obligated to answer. *See Poyzer v. McGraw*, 360 N.W.2d 748, 753 (Iowa 1985) ("In a special verdict submission it is wholly unnecessary and is generally improper for the jury to be concerned with the effect of its special findings."); *Erb v. Mut. Serv. Cas. Co.*, 123 N.W.2d 493,496 (Wis. 1963) (stating "it is reversible error for either the court or counsel to inform the jury of the effect of their answer on the ultimate result of their verdict" and finding prejudice where plaintiff's attorney advised the jury that if it answered a special verdict a particular way, the plaintiff would obtain insurance coverage). In our view a flow-chart type of direction like the direction following question 1 would not have been an improper attempt to enlighten the jury on the import of its findings, but an attempt to avoid inconsistent answers.

jury, because, in the end, the district court relied on those answers to decide the coverage issue.

In light of the inconsistency, we reverse and remand for a new trial. *Clinton Physical Therapy Servs*., 714 N.W.2d.at 613 ("[T]he court must either resume deliberations or grant a new trial.").[6]

REVERSED AND REMANDED.

[6] Given the procedural posture, the court could not have resumed deliberations. But, even if the coverage issue had not been reserved for a post-trial ruling, the inconsistency could not have been flagged for the jury because the parties agreed to a sealed verdict. *See Clinton Physical Therapy Servs.*, 714 N.W.2d at 610 ("When parties agree to a sealed verdict, they lose their right to have a verdict returned in open court where inquiry can be made into its findings.").