IN THE COURT OF APPEALS OF IOWA

No. 8-1060 / 08-1237
Filed May 29, 2009

JAY AND DEANNA CLASING,
Husband and Wife, d/b/a JADE FARMS,
Plaintiffs-Appellants,

vs.

STATE FARM FIRE AND CASUALTY COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Palo Alto County, Patrick M. Carr, Judge.

Plaintiffs appeal the district court's grant of summary judgment to defendant on their action alleging breach of an insurance contract. **REVERSED AND REMANDED.**

Terry A. White and David A. Domina of Domina Law Group, P.C., Omaha, Nebraska, and Michael R. Bovee of Montgomery, Barry & Bovee, Spencer, for appellants.

Guy R. Cook and Allison J. Doherty of Grefe & Sidney, P.L.C., Des Moines, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

The plaintiffs appeal the district court's grant of summary judgment to the defendant on their action alleging breach of an insurance contract. They contend the court erred in granting summary judgment because (1) the proximate cause of the loss of their hogs was an ice storm, not suffocation, (2) a dispute of material fact existed whether their hogs suffocated or died of heat stroke, and (3) the defendant insurer did not carry its burden to show it was entitled to judgment as a matter of law. We reverse the grant of summary judgment and remand.

I. Scope and Standards of Review.

We review the district court's ruling on a motion for summary judgment for correction of errors at law. *Jones v. State Farm Mut. Auto. Ins. Co.*, 760 N.W.2d 186, 188 (Iowa 2008). The moving party is entitled to a judgment as a matter of law "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Iowa R. Civ. P. 1.981(3); *see also Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 483 (Iowa 2007). A fact question exists "if reasonable minds can differ on how the issue should be resolved." *Rock v. Warhank*, 757 N.W.2d 670, 673 (Iowa 2008). An issue of fact is "material" only when its resolution might affect the outcome, given the applicable governing law. *Weddum v. Davenport Cmty. Sch. Dist.*, 750 N.W.2d 114, 117 (Iowa 2008). We view the record in the light most favorable to the non-moving party. *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008). In determining

whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference from the record. *Id*.

II. Background Facts and Proceedings.

Viewed in the light most favorable to the non-moving party, the summary judgment record reveals the following. The plaintiffs, Jay and Deanna Clasing, operate a hog confinement operation under the name Jade Farms. In late 2006 there was a fire in their office, necessitating repairs. On February 26, 2007, when an ice storm caused a power outage, the alarm system for the operation's four swine barns was not operating because of repairs to the office. In three of the four barns, ceramic curtains dropped when the electricity failed, allowing the swine barns to ventilate despite the loss of power. In the fourth barn, ice prevented the curtain from dropping to allow ventilation. The temperature in the unventilated barn rose quickly. 659 of the 1900 hogs in that barn died. Jade Farms estimated it suffered a loss of $109,066 from the death of the hogs.

Jade Farms filed a claim with its insurer, State Farm Fire and Casualty Company. State Farm denied the claim based on an exclusion in the insurance policy for loss to livestock caused by "suffocation." Jade Farms then sued State Farm, alleging breach of contract and bad faith. Jade Farms claimed the hogs did not suffocate, but rather died "because inadequate ventilation into the building occurred due to an insured occurrence."

State Farm moved for summary judgment. The district court granted State Farm's motion for summary judgment. It analyzed the language of the contract to determine whether there was coverage. The court noted that "a *legal cause* of

the death of the animals" was "an accumulation of ice." (Emphasis added.) It concluded "[t]he loss is thus covered under the insuring clause, unless excluded." The court then framed the issue as, "whether the death of the animals was 'caused' by suffocation within the meaning of the exclusion in the policy." The court found "there is no material dispute on the critical issue: These hogs' deaths were *directly and immediately caused* by suffocation. The loss is thus excluded by the plain language of the policy."[1] (Emphasis added.) In support of its conclusion that there was no material dispute on whether the hogs suffocated, the court pointed to evidence from a recorded statement by Jay Clasing, in which he answered "Yes" to the question, "So there's really no question as to the hogs suffocated." The court also considered language from paragraph twenty of the plaintiffs' petition alleging an "insured occurrence" caused the conditions that led to the hogs' "suffocation as that term is used in the insurance policy." The court granted summary judgment in favor of State Farm. The plaintiffs appeal.

III. Proximate Cause.

Appellants contend the court misapplied proximate cause analysis when it found "a legal cause" of the loss was the ice storm, but then excluded coverage based on the loss being "directly and immediately" cause by an excluded peril–

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[1] The court looked to a statement in paragraph 20 of the petition:

> The occurrence caused the deaths because it caused inadequate ventilation, which reduced the amount of oxygen in the building and killed or injured the swine, though they suffered on obstructions to their airways that led to their suffocation as that term is used in the insurance policy.

The beginning of the same paragraph of the petition, however, clearly stated "plaintiffs' livestock did not 'suffocate.'" The paragraph is ambiguous and does not clearly concede that the insured suffered a loss to livestock caused by suffocation.

suffocation. "The doctrine of proximate cause is applied differently in insurance cases than in tort cases." *Bettis v. Wayne County Mut. Ins. Ass'n*, 447 N.W.2d 569, 571 (Iowa Ct. App. 1989).

> In insurance law it is generally understood that where the peril insured against sets other causes in motion which, in an unbroken sequence and connection between the act and final loss, produces the result for which recovery is sought, the insured peril is regarded as the proximate cause of the entire loss.

Qualls v. Farm Bureau Mut. Ins. Co., 184 N.W.2d 710, 713 (Iowa 1971). When the cause sought is the direct and proximate cause, it is not necessarily the cause or agency that is nearest in time or place to the result, since the dominant cause may be concurrent or remote in point of time or place. *Bettis*, 447 N.W.2d at 571. Thus we look not necessarily to the last act in a chain of events, but rather to the predominant cause that set in motion the chain of events that caused the loss. *Id*. However, "[i]n an insurance policy, direct cause means immediate cause or proximate cause, as distinguished from remote cause." *Id.* "'Direct' as used in an insurance policy relates to causal connection and is to be interpreted as the immediate or proximate cause as distinguished from the remote cause." *Id.* (quoting *John Drennon & Sons Co. v. New Hampshire Ins. Co.*, 637 S.W.2d 339, 341 (Mo. Ct. App. 1982)).

Appellants argue the "cause" of their loss was an "insured occurrence," the loss of power and failure of the ceramic curtains to drop because of the accumulation of ice from the ice storm. They argue this "cause" set in motion the chain of events that resulted in the death of the hogs. They contend suffocation

was not an independent, intervening act.[2] Appellants argue the district court's reasoning starts the causation analysis midstream, in the middle of the unbroken chain of events caused by an insured occurrence.

The district court found the ice storm was a legal cause of the loss, but the death of the hogs was "directly and immediately caused" by suffocation.[3] It then concluded the policy exclusion for "suffocation" applied, so there was no coverage. The question of proximate cause is ordinarily for the jury—only in exceptional cases should it be decided as a matter of law. *See Clinkscales v. Nelson Securities*, Inc., 697 N.W.2d 836, 841 (Iowa 2005).

We agree with the district court's conclusion the loss of the hogs is covered under the insuring clause of the contract unless excluded. The question remains whether the court properly determined there was no genuine issue of material fact as to the applicability of the exclusion for suffocation.

IV. Genuine Issue of Material Fact.

The district court found there was no genuine issue of material fact concerning whether the hogs suffocated, as the term is used in the insurance

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[2] Appellee contends the "independent intervening act" claim is not preserved for our review because it was not raised in the district court and not ruled on by the court.

[3] The policy provides, in relevant part:

> 1. We do not insure for any loss to the property described in Coverages D, E, or F which consists of, or is *directly and immediately caused* by, one or more of the perils listed in items a. through u. below, *regardless of whether the loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:*
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> . . . .
>
> t. loss to livestock or poultry does not include loss caused by:
>
> (1) suffocation;

(Emphasis added.)

policy. Appellants contend the court erred in finding no genuine issue of material fact because the record evidence could support finding the hogs died of hyperthermia.

An employee of the hog operation, Ben Stephenson, stated that when they went into the barn after the ice storm, the hogs that were still alive "were just real hot. Heat exhaustion, just laying around." Stephenson stated it was very cold outside, but anywhere from 98 to 105 degrees inside.

Dr. Scott Stehlik, a veterinarian, gave this opinion in an affidavit:

> The medical cause of death was most probably hyperthermia, or overheating, due to the rapid and severe build-up of environmental heat and humidity because of the lack of adequate air exchanges and due to the physiologic inability of swine to sweat. Some of the animals may well also have expired from asphyxiation due to the accumulation of carbon dioxide coupled with the lack of oxygen. Given the research material provided by Dr. Brumm, it would appear that hyperthermia is the more likely medical cause of death. It is highly unlikely and improbable that these animals would have "piled up" or otherwise reacted to create a situation for a death by suffocation.

Given this evidence in the record, we conclude the court erred in determining there was not a genuine issue of material fact.[4] Although there is evidence from which a fact finder could find, as the court did, that the hogs died of suffocation, there also is evidence from which the fact finder could find the some or all of the hogs died of hyperthermia or some cause other than suffocation.

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[4] The record also contains an affidavit by Dr. Michael C. Brumm, president of Brumm Swine Consultancy. We did not consider this affidavit in evaluating whether there was a genuine issue of material fact because Dr. Brumm could not give an opinion as to the medical cause of the hogs' death.

V. Entitlement to Judgment as a Matter of Law.

Appellants contend the court erred in concluding State Farm met its burden of proof and was entitled to judgment as a matter of law. They basically restate their arguments the court misapplied proximate cause analysis and it incorrectly found there was no genuine issue whether the hogs suffocated. They argue the determination of proximate cause is an issue for the jury. *See Clinkscales*, 697 N.W.2d at 841. They further argue the fact issue whether the hogs died of hyperthermia or suffocation precludes summary judgment.

As the issue of whether the death of the hogs was caused by an excluded cause is critical to determining whether there is coverage for the loss, and we have determined the court erred in concluding there was no genuine dispute that the hogs died of suffocation, we must also conclude State Farm was not entitled to judgment as a matter of law.

Summary judgment was inappropriate in this case. We reverse the grant of summary judgment and remand for further proceedings.

REVERSED AND REMANDED.