RENDERED: June 9, 2000; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001385-MR

NATIONAL INSURANCE ASSOCIATION — APPELLANT

v.

APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE ROBERT I. GALLENSTEIN, JUDGE
ACTION NO. 96-CI-00116

GWENOLYN T. APPLEGATE
by and through Janet Timberlake,
her guardian — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: GUDGEL, Chief Judge; COMBS and MILLER, Judges.

COMBS, JUDGE: The appellant, National Insurance Association (National), appeals from a judgment of the Fleming Circuit Court in a declaratory action. The appellee, Gwenolyn Applegate, by and through her guardian, Janet Timberlake, sought a declaration of her rights under an insurance policy issued by National. Having carefully considered the arguments on appeal, we affirm the judgment of the circuit court.

In February 1996, Applegate purchased an insurance policy from National to insure her 1978 Monte Carlo. Shortly thereafter, National discovered that Applegate had failed to

disclose that her husband, Jeffery Applegate, had been convicted of reckless driving. Based upon this additional information, National increased Applegate's premium and sent her a bill for the difference ($28.50) on March 12, 1996. When National did not receive a payment from Applegate, it sent her a "Notice of Cancellation" on March 26, 1996. The "Notice of Cancellation" stated in part:

> YOUR PREMIUM PAYMENT OF $28.50 HAS NOT BEEN RECEIVED. THE KENTUCKY INSURANCE DEPARTMENT REQUIRES A CANCELLATION NOTICE BE SENT TERMINATING COVERAGE ON 6/28/96. IF WE RECEIVE YOUR PAYMENT OF $28.50 BEFORE THE CANCELLATION EFFECTIVE DATE, YOUR POLICY WILL NOT BE CANCELED. IF YOUR PAYMENT IS RECEIVED AFTER THE CANCELLATION EFFECTIVE DATE, A NEW POLICY WILL BE ISSUED. YOUR NEW POLICY WILL BEGIN AT 12:01 AM THE DAY FOLLOWING THE POSTMARK DATE OF YOUR PAYMENT AS SHOWN BELOW.

The bottom portion of the notice was entitled "REINSTATEMENT BILLING" and indicated that if payment was postmarked by June 6, 1996, the amount due would be $28.50 — but that if that payment was postmarked after June 27, 1996, the amount due would be $95.50. The bottom portion of the notice also stated, **"OFFER VALID FOR 30 DAYS."**

On June 30, 1996, the Applegates were involved in a horrific automobile accident resulting in a double tragedy. Jeffery was driving the 1978 Monte Carlo in which Applegate was a passenger. Jeffery died as a result of the accident, and Applegate sustained injuries so traumatic that she was ultimately declared incompetent. Her sister, Janet Timberlake, was appointed as her guardian. Following the accident, National

denied coverage of the June 30, 1996, accident, claiming that her policy had been canceled.

On September 4, 1996, Applegate, by and through her guardian, filed a petition for a declaration of her rights with regard to the insurance policy and the cancellation notice. On April 4, 1997, the Harlan Circuit Court found that the cancellation notice was ambiguous, stating that an ordinary person reading the notice could reasonably expect a thirty-day grace period before the policy was actually canceled. The court held that the purported cancellation of the policy was ineffective and that Applegate's policy was active at the time of the accident of June 30, 1996.

National appealed that ruling to this court. On December 23, 1998, the Court of Appeals rendered an opinion affirming the court's declaratory judgment in part and vacating and remanding in part. We disagreed with the circuit court's conclusion that the notice was ambiguous but agreed with the trial court's finding that the policy may have been in effect at the time of the accident if she had been under a disability tolling the premium payment period. Accordingly, we remanded the case to the circuit court for additional findings as to whether Applegate had tendered payment of the premium and, if she had not, whether the thirty-day grace period had been tolled by her disability.

On remand, the court entered judgment on April 26, 1999, making the additional findings as directed by this court. The circuit court found that Applegate had not tendered payment

to National but that she had been under a disability since June 30, 1996, which affected her ability to contract. It held that Applegate's disability was a supervening condition which excused her failure to pay the premium within the thirty-day grace period and, therefore, that her policy with National was in effect that and the accident of June 30, 1996, was covered. This appeal followed.

National argues on appeal that regardless of Applegate's alleged incapacity, her policy had lapsed at the time of the accident and that it is not required -- nor does it have a duty -- to reinstate the policy retroactively. However, the "law of the case" doctrine has essentially settled this issue, and we are precluded from re-visiting it here.

The law of the case doctrine "is a rule under which an appellate court, on subsequent appeal, is bound by a prior decision on a former appeal in the same court and applies to the determination of questions of law and not question of fact." Inman v. Inman, Ky., 648 S.W.2d 847, 849 (1982). Moreover,

> [I]f a party is aggrieved by an adverse appellate determination, his remedy is in an appellate court at the time the adverse decision is rendered. This is so because an objection in the trial court is futile and an appeal from the trial court's implementation of the appellate determination is nothing more than an attempt to relitigate an issue previously decided.

Williamson v. Commonwealth, Ky., 767 S.W.2d 323, 325 (1989). A final decision of an appellate court is the law of the case as to the issues already adjudged and stands intact as to those issues in a second appeal adjudicating other issues. Id.

In this case, we addressed and disposed of the issue of coverage on the first appeal. This court reasoned:

> Kentucky follows the majority view that reinstatement of an insurance policy that was cancelled for nonpayment of premiums has been held to restore or reinstate all the benefits accruing to the policy holder under the original contract. . . . In the case sub judice, the only conditions for reinstatement were: (1) if the premium of $28.50 is paid and postmarked on or before June 27, 1996; and (2) if the premium of $95.50 is paid and postmarked after June 27, 1996 but before July 27, 1996. We believe that the reasonable interpretation of the language "OFFER VALID FOR 30 DAYS" is that the policy holder had thirty days from June 27, 1996 in which to reinstate her coverage by paying the $95.50 premium. The additional premium required if the payment were postmarked after June 27, 1996 is further indication that the same policy would be reinstated, but because payment was made within thirty days after the otherwise effective date of cancellation, National demanded further consideration. The record doesn't reveal whether or not the $95.50 was offered or tendered in a timely manner, nor if the grace period was tolled by Applegate's disability. Therefore, the case must be remanded for these findings.

(Opinion NO. 1997-CA-001293-MR, pp. 7-8). Essentially, we held that the accident of June 30, 1996, is covered by Applegate's policy if either of two possible contingencies had occurred: (1) if she tendered payment within the thirty-day grace period provided by the cancellation notice or (2) if the grace period had been tolled by her disability. Thus, if the trial court found that either of these conditions existed, Applegate's accident was covered.

In responding to the directions of our opinion in the first appeal, the circuit court found on remand that Applegate's disability had indeed tolled the thirty-day grace period and

that, therefore, her policy was in effect at the time of the accident. This contingency having been resolved as a finding on remand, it became the law of the case as to the issue of coverage. Although National has framed the issue on appeal as "whether the reinstatement of a lapsed accident policy operates prospectively or retroactively," we ruled in the first case that coverage did exist if payment had been tendered or if the thirty-day period had been tolled -- thus rendering the issue of "reinstatement" a moot point. Additionally, we note that National did file a motion for reconsideration with this Court following our first opinion. This issue has been carefully considered, and we reiterate that we are bound by our previous opinion and the results that flowed from its directives on remand. The circuit court committed no error in carrying out the directions as provided.

We affirm the judgment of the Harlan Circuit Court.

ALL CONCUR.

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