RENDERED: November 22, 2000; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002616-MR

KELLY R. PATTERSON AND
JAMES W. HEMMELMAN, JR. APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH McDONALD-BURKMAN, JUDGE
ACTION NO. 99-CI-001284

NORTHFIELD INSURANCE COMPANY;
BABY BOOMERS, INC.; KEN STILLMAN,
JR.; LINDA STILLMAN; AND
THOMAS FINDLEY, JR. APPELLEES

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

BEFORE: DYCHE, KNOPF, AND MCANULTY, JUDGES.

DYCHE, JUDGE. Kelly Patterson and James Hemmelman, Jr., appeal from an order of the Jefferson Circuit Court granting Northfield Insurance Company's motion for declaratory judgment. We affirm.

Baby Boomers, Inc., d/b/a Gaslite Tavern, is a Kentucky corporation with its principal place of business in Louisville, Kentucky. Ken and Linda Stillman are the owners and operators of the Gaslite Tavern, a bar and lounge located in Louisville. On December 31, 1997, Patterson, Hemmelman, and James Findley were patrons of Gaslite Tavern. During the course of the evening,

Findley allegedly fell well under the influence of alcohol and became boisterous. Patterson stated that Linda Stillman asked him to "take care of" and "keep an eye on" the situation until the police arrived. Findley, however, struck both Patterson and Hemmelman with a knife.

On December 22, 1998, Patterson and Hemmelman filed an action against Baby Boomers, Inc., d/b/a Gaslite Tavern, the Stillmans, and Findley for damages resulting from their injuries. They alleged that Gaslite and the Stillmans were negligent in continuing to serve alcohol to Findley after he became intoxicated; that Gaslite and the Stillmans failed in their duty to protect them from Findley's violent conduct; and that Findley willfully committed battery against them.

On March 4, 1999, Northfield Insurance Company filed a declaratory judgment action in Jefferson Circuit Court, naming all parties to the underlying action as defendants. Northfield requested that pursuant to exclusions contained in the insurance policy it had issued to Baby Boomers, Inc., the court declare that Northfield had no duty to provide a defense or coverage in the action brought by Patterson and Hemmelman. Baby Boomers, the Stillmans, and Findley failed to respond, and the court entered a default judgment against them on April 27, 1999.

Northfield filed a motion for declaratory judgment on May 21, 1999. Patterson and Hemmelman responded by arguing that the assault and battery exclusion and the liquor exclusion were not incorporated into the original insurance contract; therefore they were not part of the policy and may not be relied upon by

either Baby Boomers or Northfield. The circuit court ruled that the policy and the exclusions were in effect at the time of the altercation and were enforceable, and granted Northfield's motion for declaratory judgment. This appeal followed.

Patterson and Hemmelman correctly note that the threshold question for this Court is whether the endorsements were made a part of the policy from its inception. We agree with the trial court that they were. The "Exclusion — Assault or Battery" endorsement (S23-CG [R 6/94]) and the "Exclusion — Liquor — Absolute" endorsement (S354-CG [R 6/94]) were both listed on the "Commercial General Liability Coverage Part Declarations" page (S3D-CG [11/94]), which had an effective date of February 11, 1997. The Coverage Part Declarations page was in turn listed underneath the "Forms and Endorsements" heading on the "Common Policy Declarations" page, also with an effective date of February 11, 1997. It is this page that Patterson and Hemmelman appear to argue creates an ambiguity in the effective date of the policy.

At the bottom of the Common Policy Declarations page is the following notation: "Countersigned: LEXINGTON, KY-03/20/97-SS By /s/ Charles C. Price." The page is also stamped "U/W APR 28 1997." Patterson and Hemmelman argue that the various dates on the Common Policy Declarations page create an ambiguity about when or whether the endorsements were made effective and a part of the policy as a whole. We disagree. The Common Policy Declarations page contains the information about the policy as a whole, including the premiums to be paid, the types of coverage

contained in the policy, additional taxes and fees, and the forms and endorsements included in the policy. All documents indicate that the effective date for the policy and the endorsements was February 11, 1997. We agree with the trial court that "the countersigning of [the Common Policy Declarations page] by Northfield's agent had nothing to do with when the policy **in its entirety** became effective" (emphasis original).

Patterson and Hemmelman correctly point out that because insurance companies prepare the contracts, ambiguities are resolved in favor of the insured. St. Paul Fire & Marine Insurance Co. v. Powell-Walton-Milward, Inc., Ky., 870 S.W.2d 223, 227 (1994). However, St. Paul also stated that:

> [t]he rule of strict construction against an insurance company certainly does not mean that every doubt must be resolved against it and does not interfere with the rule that the policy must receive a reasonable interpretation consistent with the parties' object and intent or narrowly expressed in the plain meaning and/or language of the contract. Neither should a nonexistent ambiguity be utilized to resolve a policy against the company. We consider that courts should not rewrite an insurance contract to enlarge the risk to the insurer. U. S. Fidelity & Guar. Co. v. Star Fire Coals, Inc., 856 F.2d 31 (6th Cir. 1988).

Id. at 226-27. We find no ambiguity, and decline to enlarge the contract beyond what both the insurer and the insured intended.

Having concluded that the entire contract was effective, we now address the question of whether these exclusions are applicable in this situation. Patterson and Hemmelman argue that Linda Stillman's request of Patterson to become involved in the situation was a negligent delegation of

responsibility and therefore not covered by the exclusion. The assault and battery exclusion clearly states that the policy:

> does not apply to "bodily injury," . . . [or] "personal injury," . . . arising out of assault or battery or out of any act or omission in connection with the prevention or suppression of an assault or battery, whether caused by or at the instigation or direction of the insured, an "employee" or patron of the insured, or any other person.

The exclusion does not specifically mention negligence, but for that matter neither does it use the term "intentional" to define the conduct proscribed. The policy does not apply to "any act or omission" connected to the "prevention or suppression of an assault or battery." Where the terms of an insurance contract are clear and unambiguous, the contract should be enforced as written. Masler v. State Farm Mutual Automobile Insurance Co., Ky., 894 S.W.2d 633 (1995). Furthermore, "'unambiguous and clearly drafted exclusions which are "not unreasonable" are enforceable' under Kentucky law." Meyers v. Kentucky Medical Insurance Co., Ky. App., 982 S.W.2d 203, 210 (1997)(quoting American Nat'l Bank and Trust Co. v. Hartford Accident and Indem. Co., 442 F.2d 995, 999 [6th Cir. 1971]). Patterson and Hemmelman do not challenge whether the exclusions are reasonable, only whether they are applicable. We believe they are both.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert M. Klein
William A. Miller, Jr.
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BRIEF FOR APPELLEE:

Richard W. Edwards
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