

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002222-MR

AGRICULTURAL INSURANCE COMPANY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 97-CI-00863

DIXIANA FARM, INC.; AND MORRIS B.
FLOYD AND WILLIAM BURROW FLOYD, CO-
EXECUTORS OF THE ESTATE OF WILLIAM
H. FLOYD, DECEASED, INDIVIDUALLY, and
D/B/A FAIRWAY FARM THOROUGHBRED NURSERY
SUCCESSORS IN THE INTEREST TO WILLIAM H.
FLOYD, INDIVIDUALLY AND D/B/A FAIRWAY
FARM THOROUGHBRED NURSERY

APPELLEES

OPINION
REVERSING AND REMANDING
** **

BEFORE: GUIDUGLI, MCANULTY, AND TACKETT JUDGES.

MCANULTY, JUDGE: Agricultural Insurance Company (AIC) appeals an order of the Fayette Circuit Court entering summary judgment whereby awarding, as a matter of law, Dixiana Farm, Inc. (Dixiana) proceeds claimed due under an equine mortality insurance policy which proceeds AIC asserted Dixiana forfeited under the terms and conditions of the policy. Having reviewed the record and applicable law, we reverse and remand.

Dixiana owned a fifty percent (50%) interest in the thoroughbred mare "Alydar's Fable." William Floyd (Floyd),

deceased, owned the remaining fifty percent (50%) interest. AIC issued to Dixiana an actual cash value equine insurance policy covering mortality losses of various equines, including Alydar's Fable. The policy of insurance in question covered a period of time between April 1, 1996, and April 1, 1997.

The mare Alydar's Fable suffered from dystocia (difficulty foaling) and secondary peritonitis following the stillbirth of her foal in March, 1996. This medical information was properly related to AIC vis à vis a veterinary certificate of examination for mortality insurance executed by James Morehead, D.V.M., on March 30, 1996. The veterinary certificate of insurance was attendant to AIC issuance/renewal of the above-mentioned mortality policy. Three of AIC's insurance representatives reviewed and accepted Dr. Morehead's veterinary certificate, in addition to the mare's medical records, and a renewal policy was issued.

Thereafter, between July 8, 1996, and August 26, 1996, while being boarded at Floyd's Fairway Farm, Alydar's Fable suffered from periods of extreme weight loss and lack of appetite. The mare's physical condition deteriorated rapidly. On August 26, 1996, Floyd sent the mare to Dixiana. Upon arrival, Dixiana immediately noted the mare's poor condition and sought aggressive medical diagnostic treatment therefor. Additionally, Dixiana promptly notified AIC of the mare's poor physical condition. Despite advanced medical treatment, the mare was euthanized on October 14, 1996.

AIC denied Dixiana's claim under its policy of insurance. Dixiana filed its complaint against AIC seeking the maximum insured value of the mare, \$125,000.00, less the applicable deductible amount of \$40,000.00. AIC defended by pleading, inter alia, that careless, negligent or reckless conduct contributed to Dixiana's damages; Dixiana's own actions resulted in the loss it sustained; and Dixiana failed to comply with the requisite terms and conditions of insurance.¹

Following motions for summary judgment by all parties, the trial court entered its order awarding Dixiana its claim, holding, in pertinent part:

3. The record incontrovertibly establishes that within reasonable veterinary medical probability the Thoroughbred mare ALYDAR'S FABLE would have died regardless.

The issue before this Court is straight forward, that is whether it would be impossible for AIC to prevail, under any circumstance, at trial in view of the evidence before the court. See Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., Ky., 807 S.W.2d 476 (1991); Paintsville Hosp. Co. v. Rose, Ky., 683 S.W.2d 255 (1985).

The purpose of summary judgment and the standard to be used in reviewing such an action require that the procedure is designed to expedite the disposition of cases. The grounds for summary judgment are that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The circuit court is not

¹There are amended complaints and cross-claims filed in this matter, the substance of which is neither informative nor relevant to the particular issue dispositive of this appeal. As such, we limit our discussion of the underlying facts to those necessary to address the question of law at bar.

authorized to render a summary judgment if there exists a material fact which requires a trial.

James Graham Brown Found., Inc. v. St. Paul Fire & Marine Ins. Co., Ky., 814 S.W.2d 273, 276 (1991).

While we agree with the trial court that the record, in its current condition, indicates that summary judgment "may" be appropriate, we cannot conclude that it is totally dispositive. Rather, an extensive review of the record reflects that there has been extensive discovery taken in this matter. Specifically, there is an abundance of veterinary medical testimony. In accordance with local rule 23 of the Fayette Circuit Court, the record contains only excerpts of the veterinarians' opinions as opposed to entire, more comprehensive transcripts. It is our opinion that, although compelling, the substantial gaps in the deposed testimony proffered into evidence leave questions lingering as to the totality of the respective doctors' conclusions.

"The only duty of the court on a motion for summary judgment is to determine whether there are genuine issues to be tried and not to resolve them." Id. As such, it is our opinion that the record cannot irrefutably support the finding reached by the trial court regarding the sum of the medical testimony.

The order of the Fayette Circuit Court is reversed and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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BRIEF FOR MORRIS B. FLOYD AND
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EXECUTORS OF THE ESTATE OF
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