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Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002287-MR

DANNY AND JANICE VINCENT — APPELLANTS

v.

APPEAL FROM BARREN CIRCUIT COURT
HONORABLE BENJAMIN L. DICKINSON, JUDGE
ACTION NO. 97-CI-00083

KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING IN PART;
REVERSING IN PART AND REMANDING
** ** ** ** **

BEFORE: COMBS, JOHNSON, AND KNOPF, JUDGES.

JOHNSON, JUDGE: In August 1996, the appellants' son, Ryan Vincent, then nine years old, was severely injured while playing with neighbors when a go-cart in which he was a passenger collided with a four-wheel, all-terrain vehicle. The litigation that ensued included Ryan's representative's bringing suit on Ryan's behalf against Ryan's parents. Shortly after Ryan's suit against his parents was filed, Kentucky Farm Bureau Mutual Insurance Company, the appellee herein, intervened and sought a declaration that its homeowner's policy with the Vincents does not cover the alleged liability. Danny and Janice Vincent have

appealed from the August 27, 1999, judgment of Barren Circuit Court granting Kentucky Farm Bureau its requested relief. We reject the Vincents' contention that Kentucky Farm Bureau is estopped from denying coverage and affirm on that issue; however, we accept the Vincents' argument that the trial court misconstrued the insurance policy and reverse the trial court's judgment on the issue of coverage.

The Vincents contend that Kentucky Farm Bureau is estopped from denying coverage because, they allege, it undertook the Vincents' defense in this matter without reserving its right to contest liability if the defense failed. They rely upon the rule stated by the former Court of Appeals as follows:

> "The general rule supported by the great weight of authority is that if a liability insurer, with knowledge of a ground of forfeiture or noncoverage under the policy, assumes and conducts the defense of an action brought against the insured, without disclaiming liability and giving notice of its reservation of rights, it is thereafter precluded in an action upon the policy from setting up such ground of forfeiture or noncoverage."[1]

The trial court found, and we agree, that, under the facts of this case, the above rule does not apply.

To explain why this is so, it is necessary to review some of the procedural history, which began in February 1997 with the Vincents' complaint against the Howells for damages. The Vincents brought suit on their own behalf and as guardians of Ryan. The Howells answered the complaint in May 1997, and

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[1] American Casualty Co. of Reading, PA. v. Shely, 314 Ky. 80, 83, 234 S.W.2d 303, 304 (1950) (quoting from 29 Am.Jur. at 672).

accompanying their answer was a pleading styled "Counter Claim." The purported counter-claim did not seek relief, but only asserted the affirmative defense of contributory negligence. Nevertheless, Kentucky Farm Bureau hired an attorney to defend the Vincents against the Howells' counter-claim, and on November 1, 1997, in response to that attorney's motion, the trial court dismissed the counter-claim on the ground that it failed to state a cause of action. Thereafter, the Vincents' suit against the Howells continued under the sole guidance of their own attorneys. Those attorneys had complete control of discovery and of all strategic matters, including the question of how to respond to any allegation that the Vincents' own negligence had contributed to the accident.

It so happened that Kentucky Farm Bureau also insured the Howells. In February 1998, Kentucky Farm Bureau moved for a judgment declaring the limits of its potential liability under the Howells' policies. In conjunction with that motion, or at least at about the same time, in February 1998, Kentucky Farm Bureau sent the Vincents a reservation of rights letter. The letter noted that the company would provide a defense attorney for them (the same attorney who had responded to the counter-claim), should a defense prove necessary, but it disavowed coverage under the Vincents' policy and otherwise reserved the company's rights.

In March 1998, a guardian was appointed to represent Ryan, and he took over Ryan's complaint against the Howells. In October 1998, Ryan's guardian amended Ryan's complaint to include

a claim against the Vincents. The attorney provided by Kentucky Farm Bureau undertook the Vincents' defense. In April 1999, after the Vincents had rejected a settlement offer, Kentucky Farm Bureau moved for a judgment declaring the limits of its potential liability under the Vincents' homeowner's policy. Kentucky Farm Bureau argued, as will be discussed in detail in the second part of the Opinion, that the Vincents' policy does not cover liability for the accident on the Howells' property. In addition to arguing that the policy does provide coverage, the Vincents argued that Kentucky Farm Bureau had undertaken their defense back in May 1997, at the time of the Howells' counter-claim, and that the reservation of rights letter in February 1998 was thus untimely and ineffective. The trial court rejected this argument, and the Vincents appealed.

As noted above, the rule upon which the Vincents rely applies only if the insurer undertakes a defense "without disclaiming liability and giving notice of its reservation of rights." We agree with the trial court that there was a sufficient separation, temporally and otherwise, between the Howells' counter-claim and Ryan's amended complaint as to make the former irrelevant, for the purposes of this rule, to the latter. The reservation of rights letter, therefore, effectively preserved Kentucky Farm Bureau's right to deny coverage for the Vincents' alleged liability to Ryan, and the rule of estoppel urged by the Vincents does not apply.

Even if the reservation of rights letter were deemed untimely, the Vincents would not be entitled to relief. Estoppel

is appropriate only if the party urging it was prejudiced by the other party's action. Prejudice to an insured is often presumed where it is shown that the insurer exerted control over the case,[2] but here the Vincents kept control. They were on notice, whether timely or not, that the insurance company denied coverage. Their own attorneys had conducted extensive discovery and had been obliged to consider whether the Vincents might themselves be deemed negligent. Any defense provided by Kentucky Farm Bureau would be subject to criticism by these attorneys and could be rejected if it deviated too much from their recommendations.[3] Under these circumstances, it seems to us that prejudice must be shown rather than presumed; and the Vincents have not made such a showing. Accordingly, the trial court did not err in ruling that Kentucky Farm Bureau cannot be estopped from raising its defense to coverage.[4]

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[2] See American Casualty Co., supra at 305,("One of the basic elements of an estoppel is that the person claiming it must have been prejudiced by the action of the person against whom it is asserted. Generally the courts hold that where an insurance company undertakes the defense of an accident case, the loss of the right by the insured to control and manage the case is itself a prejudice.").

[3] Cincinnati Insurance Co. v. Vance, Ky., 730 S.W.2d 521 (1987).

[4] See Western Casualty & Surety Co. v. City of Frankfort, Ky., 516 S.W.2d 859 (1974) (holding that an insurer's mere technical delay in giving a non-waiver notice did not deprive the insured of its right to manage its defense and thus did not provide the basis for an estoppel); and cf. Universal Underwriters Insurance Co. v. Travelers Insurance Co., Ky., 451 S.W.2d 616 (1970) (holding that no prejudice attended an insurance company's withdrawal from an insured's defense because alternative counsel had been serving on the case as well). See Pennsylvania National Mutual Casualty Insurance Co. v. Kitty Hawk Airways, Inc., 964 F.2d 478 (5th Cir. 1992) (questioning the

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We will now address the second issue concerning the disputed insurance coverage. Resolution of this issue requires application of the following exclusion from the Vincents' homeowner's policy:

> 1. Coverage E - Personal Liability and Coverage F - Medical Payments to Others do not apply to "bodily injury" or "property damage":
> . . .
> f. Arising out of:
> (1) the ownership, maintenance, use, loading or unloading of motor vehicles or all other motorized land conveyances, including trailers, owned or operated by or rented or loaned to a "insured";
> (2) The entrustment by an "insured" of a motor vehicle or any other motorized land conveyance to any person; or
> (3) Vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using a conveyance excluded in paragraph (1) or (2) above.
>
> This exclusion does not apply to
> . . .
> (2) A motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and:
> (a) Not owned by an "insured;" or
> (b) Owned by an "insured" and on an "insured location";

The motorized go-cart in which Ryan was riding at the time of the accident belonged to the Vincents. Any alleged liability of the Vincents for Ryan's injuries, therefore, is excluded from coverage under provisions f(1) or f(2) above unless one of the exceptions to these exclusions applies. We agree with the Vincents that exception (b) applies.

(...continued)
propriety of a presumption of prejudice even in cases where the insurer conducts the entire defense).

The Vincents' residence is on farmland in rural Barren County. The accident occurred on adjacent land, known as the Webb Farm, which the Vincents do not own, but which is claimed by them to be an "insured location" as required by exception (b). Under the policy, an "insured location" is

> 4.a. The "residence premises";
> 4.b. The part of other premises, other structures and grounds used by you as a residence and:
> (1) Which is shown in the Declarations; or
> (2) Which is acquired by you during the policy period for your use as a residence;
> 4.c. Any premises used by you in connection with a premises in 4.a. or 4.b. above.

For several years prior to the accident, the Vincents had been permissive users of the Webb Farm. They had maintained animals on the Webb Farm and had stored equipment and supplies in Webb Farm sheds and barns. Over time, they had worn paths from their land to the Webb Farm outbuildings. Prior to the accident, the then-owners of the Webb Farm, the Howells, permitted this use and themselves used the paths to travel back and forth between the two properties. The Vincents' children and the Howells' children regularly played together along the paths, and it was on one of those paths that Ryan's accident occurred. Thus, the Vincents maintain that the accident occurred on premises used by them "in connection with" their "residence premises" and therefore the premises were an "insured location" under section 4.c. of their homeowner's policy.

Since the phrase "in connection with residence premises" is not defined within the policy and apparently has not yet been interpreted by a Kentucky appellate court, we must do

so. As the parties have noted, the construction of a contract is a matter of law which this Court undertakes de novo.[5] The cardinal principle of that construction, as in the construction of any writing, is to give effect to the expressed intent of the makers.[6] "[I]n this state doubts concerning the meaning of contracts of insurance are resolved in favor of the insured."[7]

> [I]n the absence of ambiguities or of a statute to the contrary, the terms of an insurance policy will be enforced as drawn. Osborne v. Unigard Indemnity Co., Ky.App., 719 S.W.2d 737, 740 (1986); Woodard v. Calvert Fire Ins. Co., Ky., 239 S.W.2d 267, 269 (1951). Unless the terms contained in an insurance policy have acquired a technical meaning in law, they "must be interpreted according to the usage of the average man and as they would be read and understood by him in the light of the prevailing rule that uncertainties and ambiguities must be resolved in favor of the insured." Fryman v. Pilot Life Ins. Co., Ky., 704 S.W.2d 205, 206 (1986). Although restrictive interpretation of a standardized adhesion contract is not favored, neither is it the function of the courts to make a new contract for the parties to an insurance contract. Moore v. Commonwealth Life Ins. Co., Ky. App., 759 S.W.2d 598, 599 (1988). Under the "doctrine of reasonable expectations," an insured is entitled to all the coverage he may reasonably expect to be provided according to the terms of the policy. Woodson v.

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[5]Hibbitts v. Cumberland Valley National Bank & Trust Co., Ky.App., 977 S.W.2d 252, 254 (1998).

[6]Washington National Insurance Co. v. Burke, Ky., 258 S.W.2d 709, 710 (1953); Ex Parte Walker's Ex'r, 253 Ky. 111, 117, 68 S.W.2d 745 (1933).

[7]Hendrix v. Fireman's Fund Insurance Co., Ky.App., 823 S.W.2d 937, 938 (1991) (citing State Auto. Mutual Insurance Co. v. Ellis, Ky.App., 700 S.W.2d 801, 803 (1985)).

> Manhattan Life Ins. Co., Ky., 743 S.W.2d 835, 839 (1987).[8]

Contracts should be construed in their entirety and the subject matter of the agreement and the situations of the parties should be taken into account.[9]

An excellent statement "as to the manner of construction of insurance policies" was provided by our Supreme Court in Eyler v. Nationwide Mutual Fire Insurance Co.[10]

> Kentucky law is crystal clear that exclusions are to be narrowly interpreted and all questions resolved in favor of the insured. Koch v. Ocean Accident & Guaranty Corp., 313 Ky. 220, 230 S.W.2d 893 (1950); Webb v. Kentucky Farm Bureau Ins. Co., Ky.App., 577 S.W.2d 17 (1978). Exceptions and exclusions are to be strictly construed so as to render the insurance effective. State Automobile Mutual Ins. Co. v. Trautwein, Ky., 414 S.W.2d 587 (1967); Davis v. American States Ins. Co., Ky.App., 562 S.W.2d 653 (1977). Any doubt as to the coverage or terms of a policy should be resolved in favor of the insured. Aetna Life & Casualty Co. v. Layne, Ky., 554 S.W.2d 407 (1977). And since the policy is drafted in all details by the insurance company, it must be held strictly accountable for the language used. Wolford v. Wolford, Ky., 662 S.W.2d 835 (1984).

"[T]he courts cannot make a new contract for the parties under the guise of interpretation or construction but must determine

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[8]Hendrix, supra. See also St. Paul Fire & Marine Insurance Co. v. Powell-Walton-Milward, Inc., Ky., 870 S.W.2d 223 (1994).

[9]Cook United, Inc. v. Waits, Ky., 512 S.W.2d 493, 495 (1974); J.P. Morgan Delaware v. Onyx Arabians II, Ltd.,825 F.Supp. 146 (W.D.Ky. 1993).

[10]Ky., 824 S.W.2d 855, 859-60 (1992).

the rights of the parties according to the terms agreed upon by them."[11]

Turning our focus to cases that have addressed insurance contracts similar to the one at issue herein, we note that in Nationwide Mutual Insurance Co. v. Prevatte,[12] the Court held that the insurance policy provided coverage for an accident involving an all-terrain vehicle that occurred on land adjacent to the insured's residence. The policy in Prevatte contained the same "in connection with" language that is at issue herein.

Prevatte at the time of the accident was a guest in the home of the insureds, the Simpsons. "Prevatte was riding on a trail which began on the Simpson property and ended on the property owned by a neighbor at the time the accident occurred." The evidence showed that the Simpsons' "children regularly rode the ATV's on the property where the accident occurred and that the family used the trail for walking"; that the Simpsons "had been walking and riding on the property for several years"; and "[e]ach walk or ride began and ended on the Simpson residence."

The Court stated:

> We, therefore, conclude that the location where the accident occurred was an insured location as defined by the policy because it was used in connection with the Simpson residence.
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> We are unwilling to rewrite the insurance policy at issue to restrict coverage to locations where the insureds have a legal interest. The facts of the case sub

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[11]Cheek v. Commonwealth Life Insurance Co., 277 Ky. 677, 686, 126 S.W.2d 1084, 1089 (1939).

[12]108 N.C.App. 152, 423 S.E.2d 90 (1992).

> judice fall squarely within the exception enumerated in 4c which allows coverage under the policy. We also note that plaintiff-insurer, who drafted the policy, had the opportunity to restrict the definition of insured location to include only those locations in which the insureds had a legal interest, by expressly providing so in the policy. Plaintiff-insurer failed to include such a provision. Absent such a clause of restriction, coverage should not be denied under the facts of this case.[13]

Kentucky Farm Bureau relies on Illinois Farmers Insurance Co. v. Coppa,[14] where an all-terrain vehicle accident had occurred in a hayfield not owned by the insured but adjacent to premises the insured did own. The Court found that the accident was not covered by the homeowner's policy, which contained exclusions for "accidents occurring off insureds' 'residence premises.'"[15] The Court stated that

> "insured location" was not meant to describe adjacent, non-owned land on which an ATV might be used. The hayfield is not part of the residence premises and is not "used in connection with" such premises as are approaches or easements of ingress to or egress from the property. It is not reasonable to expect that every field or pathway in the neighborhood leading to the insureds' residence is property "used in connection with" the residence.[16]

We believe the Court's holding in Coppa that "[t]he hayfield is not a part of the residence premises and is not 'used in connection with' such premises as are approaches or easements

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[13]Prevatte, supra at 108 N.C.App. 156, 423 S.E.2d 92.

[14]494 N.W.2d 503 (Minn.App. 1993).

[15]Id. at 504.

[16]Id. at 506.

of ingress to or egress from the property" clearly distinguishes Coppa from the case at bar. The Court in Coppa emphasized that "[i]t is not reasonable to expect that every field or pathway in the neighborhood leading to the insured's residence is property 'used in connection with' the residence." That statement and the summary of the facts in that case clearly indicate that the neighbor's adjoining hayfield was not being used by the Nelsons with the permission of the owner, nor was the hayfield being used by the Nelsons on a regular basis in connection with the Nelsons' property. The fact that the adjoining property was being used in crop production as a hayfield further demonstrates, unlike the case sub judice, that the field was not a path for the regular use of an all-terrain vehicle.[17]

Another case that denied coverage under a similar policy is Safeco Insurance Co. of America v. Clifford,[18] where a cousin of the insured's son was injured in an all-terrain vehicle accident on property adjacent to the insured's residence and owned by the insured's mother. The insured presented evidence showing that he and his family often used his mother's property and argued, relying on Prevatte, that the accident had occurred on "insured premises" because they were premises used "in

[17]Furthermore, the Court of Appeals of Minnesota stated that it was reviewing the declaratory judgment to determine whether the factual findings were clearly erroneous. Our review of this case is de novo as to a question of law. The Court in Coppa did address whether the language in the policy was ambiguous as a question of law.

[18]896 F.Supp. 1032 (D.Or. 1995).

connection with" his residence premises. However, the U.S. District Court rejected this argument.

While Clifford is not as distinguishable from our case as Coppa is, it is still distinguishable. "Rosemary Clifford . . . own[ed] the property adjacent to the property of William and Lauri Clifford. William and Lauri Clifford [had] used the property of Rosemary Clifford for recreation, borrowing and lending garden equipment, helping with chores, loading and unloading livestock and equipment, storing furniture, storing firewood, and burning garbage. . . . The property of Rosemary Clifford [was] surrounded by a chain link fence."[19] The all-terrain vehicle accident involved the insureds' child, Travis. Travis was pulling his cousin Michael "behind the ATV on a 'sled'" when Michael struck a pole in Rosemary Clifford's yard and broke his leg. In holding that the use of Rosemary Clifford's property was not sufficient to be "in connection with" the residence premises, the Court stated:

> The defendants here provide evidence tending to show that the property at issue is used on occasion when there is garbage to burn and when there is something to be loaded in or unloaded from a truck that does not fit in the driveway of the property of William and Lauri Clifford. These facts are not sufficient to transform the adjacent land, not owned by the insured, into an "insured location" under the Policy. The Cliffords and the Petersons do not state that the property is used routinely in any matter connected with the insured property, nor do they indicate that they have an easement for

[19]Clifford, supra at 1034.

the use of the property of Rosemary Clifford.[20]

We believe Clifford is distinguishable from the case sub judice since the evidence herein showed that the Vincents' children and the Howells' children regularly played together along the path to the extent that the path had become worn. The Court in Clifford noted that the Cliffords did "not state that the property is used routinely in any matter connected with the insured property, nor [did] they indicate that they have an easement for the use of the property of Rosemary Clifford." In the case sub judice, the Vincents and the Howells strongly contend that the Webb Farm is used by the Vincents on a regular basis for recreation such as maintaining livestock, storing equipment and walking and riding on the paths. Kentucky Farm Bureau has not contended that the Vincents were required to establish a legal claim as to the use of the property, such as an easement, in order to have coverage.

As noted by the Vincents, in related cases it has been held several times in interpreting a homeowner's policy that access ways are a part of the insured premises.[21] In Uguccioni v. United States Fidelity and Guaranty Co., supra, the Court held that "a roadway in a private residential development is an 'insured location' under a homeowner's insurance policy." The

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[20]Id. at 1036.

[21]Uguccioni v. United States Fidelity & Guaranty Co., 597 A.2d 149 (Pa.Super. 1991); Nationwide Mutual Insurance Co. v. Erie & Niagara Insurance Association, 672 N.Y.S.2d 596 (N.Y. App.Div. 1998); American Family Mutual Insurance Co. v. Bishop, 743 S.W.2d 590 (Mo.App. 1988).

Uguccionis owned a residence in the Cobble Creek Estates that was insured by USF&G. Michael A. Pirrung was fatally injured while operating an all-terrain vehicle owned by the Uguccionis "along a private roadway within the Cobble Creek development" [emphasis added]. The insurance policy contained an exclusion from personal liability coverage for use of a "'motorized land vehicle owned by any insured and designed for recreational use off public roads, while off an insured location.'" "An 'insured location' [was] defined, in pertinent part, as 'the residence premises' and 'any premises used by you in connection with the [resident premises]'" [emphasis added]. Thus, the coverage that was found in Uguccioni was under a policy that included the same "in connection with" language that is at issue herein. Similar to the case sub judice, Pirrung, at the time of the accident, was using the private road as a recreational path.

In Nationwide Mutual, supra, the Court held that "the policy covers liability arising out of the use of the pick-up truck" where the truck "was used exclusively for farm purposes, and, at the time of the accident, was traveling along the most direct route between two farms operated by the insured." While the policy at issue in that case included "in connection with" language similar to the language at issue herein, this language was not the sole basis for the Court finding coverage. Nationwide Mutual's policy also provided that the "insured premises" includes "approaches and access ways immediately

adjoining the insured premises."[22] The Court held that coverage was provided for the insured's use of the public highway between the two farms because the policy provided for coverage of "approaches and access ways immediately adjoining the insured premises."

The Court in American Family Mutual Insurance Co. v. Bishop, supra, also found coverage for liability arising from a go-cart accident. Michelle Bishop was operating a go-cart owned by her parents, the insureds, on the two-lane residential street where the insureds' residence was located. The go-cart went over the curb and onto property owned by the Crowders that was located across the street from the Bishops' property. The go-cart struck and injured Darlene Gardner. The Bishops' homeowner's insurance policy with American Family Mutual included a provision excluding coverage for bodily injury "arising out of the ownership, negligent entrustment . . . [or] use . . . of . . . motorized vehicles owned or operated by . . . any insured." Motorized vehicle included a "motorized land vehicle owned by any insured and designated for recreational use off public roads, while off any insured premises" [emphasis added by Bishop]. Insured premises included "'approaches and access ways immediately adjoining the insured premises.'" In holding that coverage applied to the go-cart accident, the Court stated, "the provision providing coverage for 'approaches and access ways immediately adjoining the insured premises' is fairly susceptible to the

[22]Id. at 597.

interpretation that it covers the accident which took place on the street in front of the Bishops' house."

The law clearly requires Kentucky Farm Bureau to have drafted the insurance contract so that the exclusion of coverage it seeks is understandable and workable. The law also requires the insurance company to be bound by the language it chooses to use. Obviously, Kentucky Farm Bureau had the option to limit the coverage as it now seeks to do, but it was obligated to use contract language clear and specific enough to advise the Vincents of the exclusion. Simply stated, we believe the insureds' nine-year-old son's use of the worn path to ride his go-cart from his house to the Webb Farm and back again on a routine and regular basis in the normal course of child's play is a use that is "in connection with" the Vincents' property. Accordingly, Farm Bureau is required to provide the Vincents the coverage they bought.

For these reasons, we affirm in part and hold that Kentucky Farm Bureau is not precluded from asserting a defense to coverage by its limited participation in a much earlier and far different phase of the case. However, as to the issue of coverage, we reverse in part and hold that the liability provisions of the Vincents' homeowner's policy provide coverage for Ryan's accident. Accordingly, this matter is affirmed in part, reversed in part and remanded for further proceedings consistent with this Opinion.

COMBS, JUDGE CONCURS.

KNOPF, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

KNOPF, JUDGE, DISSENTING: Respectfully I dissent. I agree with the trial court that the Vincents' alleged use of the Webb Farm was not "in connection with" their use of their residence premises. Though the Webb Farm was near the Vincents' residence and though the Vincents' use of the neighboring farm was habitual and no doubt convenient, the phrase "in connection with" in this context means something more definite, I believe, than "linked by proximity, habit, or convenience." It includes the idea that use of the other premises is necessary or reasonably necessary to further what is a covered use of the residence premises. Without such a limitation, what was intended to be a reasonably narrow exception to the policy's motor-vehicle exclusion is transformed into broad coverage of ATV use--coverage available under other policies, and coverage subject to extensive modification by insureds whenever their use of unowned premises becomes "habitual." To construe the phrase "in connection with" as broadly as the majority has done, as pertaining to any use of neighboring premises that is often repeated or that makes the residence premises more convenient, renders the policy exclusion so uncertain in its effect as to defeat one of its basic purposes, which is to make the insurance company's potential liability more predictable. Such a reading, I believe, is unreasonable in the circumstances and so does not invoke the rule of liberal construction.

Although Nationwide Mut. Ins. Co. v. Prevatte, 423 S.E.2d 90 (N.C. App. 1992), supports the majority's expansive reading of the phrase "in connection which," I am persuaded that

a better reading was adopted in Safeco Insurance Company of America v. Clifford, 896 F. Supp. 1032 (D.Or. 1995), and Illinois Farmers Ins. Co. v. Coppa, 494 N.W.2d 503 (Minn. App. 1993), where homeowners coverage was held not to extend to ATV use on unowned premises that provided no greater service to the residence premises than added convenience and enjoyment. This narrower reading is supported, too, I believe, by Uquccioni v. United States Fidelity and Guaranty Co., 597 A.2d 149 (Pa. Super. 1991); Nationwide Mutual Insurance Co. v. Erie and Niagara Insurance Assoc., 672 N.Y.S.2d 596 (N.Y. App. Div. 1998); American Family Mutual Insurance Co. v. Bishop, 743 S.W.2d 590 (Mo. App. 1988), in which coverage was extended, but the fact that the ATV use had occurred on premises that served the residence premises as a necessary access-way clearly bore on the decision.

Because the Vincents' permissive use of the Howells' property was only convenient for, but in no sense reasonably necessary to, their use of their own residence premises, I agree with the Barren Circuit Court that the Howells' property where the accident occurred was not an "insured location" under the Vincents' homeowners policy. Accordingly, I respectfully dissent and would affirm the trial court's judgment in its entirety.

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