

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002954-MR

PETE R. DAILEY III, Individually,
and d/b/a DAYLAND FARMS

APPELLANTS

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE WILLIAM MAINS, JUDGE
ACTION NO. 97-CI-90092

AMERICAN GROWERS INSURANCE and
AMERICAN AGRISURANCE, INC.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, GUIDUGLI AND JOHNSON, JUDGES.

EMBERTON, JUDGE: Pete R. Dailey made a claim for crop insurance benefits against American Growers Insurance Company and American Agrisure for damage sustained to his 1996 tobacco crop on two specific fields identified by their farm's serial number as FSN 2654 and FSN 1354.¹ Dailey brought this action alleging that American Growers breached the insurance contract when it denied coverage under a policy issued to Dayland Farms and instead made

¹ American Agrisure is affiliated with American Growers and is the marketing and service agent for American Growers crop insurance business.

payment pursuant to a policy issued to him individually. The trial court granted summary judgment to the insurance company and this appeal followed.

In 1995 Dailey applied for, and received, a multi-peril crop insurance policy from American Growers. He identified the counties in Kentucky where he grew tobacco, the estimated acres in each county, and the applicable coverage level for each farm. Dailey identified himself as the owner and used his own social security number. Policy No. NP-284734 was issued through Town and Ranch Insurance Company, in Winchester, Kentucky. In 1996, Dailey filed another application for crop insurance with American Growers in the name of Dayland Farms with Hoffman, Ison & Green Insurance Agency in Mount Sterling, Kentucky. American Growers issued Policy No. NP-325886 to "Dayland Farms" listing the FSNs of the fields covered as FSN 2654 and FSN 1354.

The tobacco grown in fields FSN 2654 and FSN 1354 sustained hail damage in 1996, and Dailey made a claim for recovery under Policy No. NP-325886. "Dayland Farms" is not a separate and identifiable entity and the farms are owned by Dailey. All of the income and loss generated by Dayland Farms is reported on Dailey's federal and state income tax returns. All tobacco sale bills and marketing cards, concerning fields FSN 2654 and FSN 1354, were issued to Dailey under his social security number. In fact, all the production documents and government program records for FSN 2654 and FSN 1354 were issued to Dailey under his social security number. American Growers concluded that Dayland Farms did not have an insurable interest

in the fields; that FSN 1354 was located in Fayette County; that a portion of FSN 2654 was located in Fayette County; and that the tobacco marketing cards for both fields identified them as Fayette County farms. It then transferred coverage to Dailey's Fayette County policy, Policy No. NP-284734, and issued a total payment of \$54,214, based on the level of coverage provided for in that policy. Dailey maintains that the claim should have been paid under Policy No. NP-325886 which would have resulted in a larger payment.

The National Crop Insurance Manual approved by the FCIC provides in relevant part as follows:

A "Person" or "Insured" is an individual, partnership association, corporation, estate, trust, other business enterprise, legal entity and, wherever applicable, a state, a political subdivision of a State, or any agency thereof.

It further provides that:

A. Only producers who receive all or part of a crop, by reason of their ownership or tenancy, can be insured.

"Dayland Farms" is not an entity separate from Dailey; only Dailey, therefore, could have an insurable interest. The trial court correctly found that Dailey was properly paid under Policy No. NP-284734 and we adopt the following portion of its opinion:

The Court finds that multi-peril crop insurance policies are subject to the regulations of the Federal Crop Insurance Corporation and are not subject to state or local rules or regulations. 7 CFR §400.352.

It is undisputed that Dailey suffered a loss to his tobacco grown, Fields FSN 2654 and FSN 1354, and that American Growers and AmAg paid the loss according to the provisions of Policy No. NP-284734 issued to Pete R. Dailey, III. The Court further finds that AmAg and American Growers, pursuant to the guidelines mandated by the FCIC and crop insurance adjusting standards, correctly adjusted, reassigned, and paid Dailey's claim for the hail damage to FSN 2654 and FSN 1354 under Policy No. NP-284734 issued to Pete R. Dailey, III. AmAg and American Growers did not breach their contract with Mr. Dailey in that federal guidelines mandated the transfer of the coverage from NP-325886 (Dayland Farms) to Policy No. NP-284734 (Pete R. Dailey, III). In addition, there is no violation of the Unfair Claim Settlement Practices Act since the claim was adjusted according to the FCIC regulations and the adjusting standards employed in the crop insurance industry. Accordingly, because there are no material issues of fact, the Defendants, American Growers and AmAg, are entitled to judgment as a matter of law. Steelvest, Inc. v. Scansteel Service Center, Ky., 807 S.W.2d 476 (1991).

The judgment is affirmed.

GUIDUGLI, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent.

The Majority Opinion adopted a portion of the trial court's order to support its affirmance. Unfortunately, the trial court's order fails to clearly explain its grounds for granting summary judgment to the appellees, and provides very little information to support the trial court's ruling. Essentially, the trial court ruled that since the farms at issue (FSN 2654 and FSN 1354) were listed in 1995 on Policy No. NP-284734, which provided coverage at 55%, prior to being listed in 1996 on Policy No. NP-325886, which provided coverage at 75%, and since Daily

individually owned a 100% interest in both farms, under the rules of the Federal Crop Insurance Corporation the coverage provided by the earliest policy (Policy No. NP-284734) must apply to the claim. This limitation in coverage under Policy No. NP-284734 resulted in a payment to Dailey for his loss of approximately \$45,000.00 less than would have been paid him under Policy No. NP-325886. However, from the record it is clear that Dailey did not intend for FSN 2654 and FSN 1354 to be covered by the first policy. On July 15, 1996, when Dailey was required to file an acreage report on his crops, he listed "0" acres on FSN 2654 and FSN 1354 on the first policy and 22.7 acres on the second policy. Obviously, Dailey had no intention of claiming double coverage; he was merely seeking coverage at 75% under the second policy.

The trial court, as quoted by the Majority Opinion, found that the appellees "pursuant to the guidelines mandated by the FCIC and crop insurance adjusting standards, correctly adjusted, reassigned, and paid Dailey's claim." From the trial court's order, it is unclear as to which FCIC guidelines it relied on. The appellees in their brief make the following argument in reliance upon FCIC rules and regulations:

Under the FCIC rules and regulations, Dailey had the responsibility to report the correct name and Social Security Number on his application for Policy #MP-325886. 7 C.F.R. §499.404 (1999). Dailey was also required to report the name and Social Security Number of any individuals who had a substantial or beneficial interest in "Dayland Farms". Id.

In this case, Dailey, and not "Dayland Farms" had an insurable interest in the tobacco fields reported on Policy #MP-325886. Said farms should have been reported on

Policy #MP-284734 since Dailey was the only "person" or "insured", who had an insurable interest in the tobacco fields in question. The accuracy of the field data submitted by Dailey as "Dayland Farms" is not an issue in this case. Fields FSN 2654 and FSN 1354 should have been included on Dailey's Fayette County policy, #MP-284734. Accordingly, the Montgomery Circuit Court was correct in holding that there are no genuine issues of material fact precluding summary judgment in this case.

. . .

The only issue pertains to whether American Growers followed the appropriate guidelines in transferring coverage from #MP-325886 to Dailey's Policy #MP-284734 and paying Dailey's claim based upon the level of coverage provided in #MP-284734.

The guidelines for determining an insured's insurable share, and specifically whether the named insured is entitled to the coverage provided under the policy, are summarized in relevant part as follows:

DETERMINING INSURABLE SHARE.

B. Verify that the:

1. Producer has a bona fide interest in the crop.
2. Application shows the correct entity (individual, partnership, corporation, co-owner, joined operator, estate, trust, etc.)

C. Verify the insurer's correct share by crop by comparing the reported share on the crop insurance acreage report to the insured's share shown on:

1. FSA documents on which the insured's share would be shown for other USDA programs,
2. Elevator summaries, packer's statements, etc., or

3. If needed, Lease Agreements, Land Deeds, or other similar evidence to determine the correct share [citation to record omitted].

American Growers was required to abide by the FCIC guidelines and verify whether "Dayland Farms" had a bona fide interest in the crop, and whether the correct entity was reported on the crop insurance application. 7 C.F.R. §400.655(4) (1999). In this case, "Dayland Farms" was listed as the named insured under a separate EIN Number on Policy #MP-325886. The tobacco sale bills and marketing cards for FSN 2654 and FSN 1354, however, confirmed that Dailey and not "Dayland Farms" owned 100% interest in both farms. . . . All tobacco fields in which Dailey had an interest in Fayette County had to be insured in the same policy. Field FSN 1354 was located in Fayette County. A portion of Field FSN 2654 was located in Fayette County and the tobacco marketing cards for FSN 2654 identified same as a Fayette County farm. . . . American Growers transferred coverage for both fields to the Fayette County policy, Policy MP-284734. American Growers computed the covered loss pursuant to the coverage afforded under MP-284734. Dailey does not dispute the computation or the method of adjustment. Accordingly, the Montgomery Circuit Court was correct in concluding American Growers complied with the Federal Crop Insurance Guidelines in adjusting and paying Dailey's 1996 tobacco loss for Farms FSN 2654 and FSN 1354.

The FCIC is authorized by federal law to promulgate rules and regulations. 7 U.S.C. 1516(b). The regulations are found in the Federal Crop Insurance Manual. The Manual, at the time of this loss provided rules and regulations for both Federal and private insurers. The National Crop Insurance Services takes that manual and pares it down to provide the Underwriting Rules for Multiple Peril Crop Insurance for private companies only in its NCIS 760 Manual. The NCIC's manual is then resubmitted to the FCIC for approval. The NCIS manual, 15th edition

9/94 controlled the policies issued to Mr. Dailey that are the subject of this litigation. The entire manual is too extensive to be attached hereto as an exhibit however, the pertinent section provides:

General Underwriting Information

A. Basic Information

- (4) Other MPCCI Insurance. Only ONE MPCCI policy, IS permitted on the same crop and share in the same county except for hybrid seed corn. If it is determined that more than one policy covering the insured's share is intentional, the insured maybe [sic] subject to fraud provision stated in the applicable crop policy. If FCIC/Insurance Company determines the violation was not intentional, the **policy with the earliest date of application will be in force and all other policies will be void** [emphasis added in original].

Although the policies were written under separate names, Dailey has admitted that Dayland Farms is solely owned by him and is not a separate entity. In fact, Dayland Farm is not a separate insured but rather an alias of Pete Dailey, III. . . . Since both parties were in the same county, according to the Farm Service Administration and marketing cards, and involved the same insured, pursuant to the federal underwriting guidelines as stated in the NCIC 760 Manual, American Growers paid Dailey for his crop loss pursuant to the policy with the earliest application date. AmAg and American Growers paid the loss pursuant to MP-3284734 since it had the earlier application date. The application for MP-3284734 was signed and dated March 15, 1995. . . . The application for MP-325886 was signed and dated March 15, 1996. . . . It is apparent that American Growers gave Dailey the benefit of the doubt in believing that the violation in applying

for two policies was unintentional and paid Dailey's tobacco crop loss at the rate specified in the earlier, MP-3284734 policy. American Growers did not breach any contract with Dailey. In fact, American Growers followed the policy set up by the FCIC when adjusting Dailey's claim.

The Majority Opinion has apparently accepted the appellees' argument that Dailey cannot prevail on his claim under the second policy because that policy was issued to Dayland Farms. The Majority Opinion states, "'Dayland Farms' is not a separate and identifiable entity and the farms are owned by Dailey. . . . American Growers concluded that Dayland Farms did not have an insurable interest in the fields[.]" The Majority Opinion then relies on the National Crop Insurance Manual as follows:

A "Person" or "Insured" is an individual, partnership association, corporation, estate, trust, other business enterprise, legal entity and, wherever applicable, a state, a political subdivision of a State, or any agency thereof [emphasis added].

A. Only producers who receive all or part of a crop, by reason of their ownership or tenancy, can be insured.

The Majority Opinion then states, "'Dayland Farms' is not an entity separate from Dailey; only Dailey, therefore, could have an insurable interest." I disagree. As argued in his brief, one of the specific categories provided for in FCIC 18100-01 under the category of "entity" is an "individual"; and the example shown as the "application" name is "Northern Land Company c/o James T. Anderson." One of the examples listed in the Manual as a "Person" or an "Insured" is "other business enterprise."

Certainly, "Dayland Farms" as a sole proprietorship qualifies under the Manual as an "other business enterprise".

Furthermore, I believe it needs to be emphasized that this case does not involve allegations of fraud by Dailey. Dailey did not seek to have the same farm covered twice by two separate policies. I believe the appellees have misapplied the paragraph quoted previously entitled, "General Underwriting Information A. Basic Information (4)," which states, in part, "[i]f it is determined that more than one policy covering the insured's share is intentional, the insured maybe [sic] subject to fraud provision stated in the applicable crop policy." I do not believe this provision has any relevance to Dailey's case. He did not have two policies on the same farm and the same crop; he had two separate policies on separate farms and separate crops. There was no misrepresentation by Dailey.

I believe the Majority Opinion is mistaken in affirming the trial court based on Dayland Farms' not having an insurable interest in the two farms at issue. In fact, from the trial court's order quoted previously it does not appear that lack of an insurable interest was the basis for the trial court's ruling. The trial court's order is not clear, but the appellees have argued throughout (as stated in their Memorandum of Law in Support of Defendant's Motion for Summary Judgment) that Policy No. NP-284734 had to apply to Dailey's claim "[s]ince both policies were in the same county and involved the same insured, pursuant to the federal underwriting guidelines as stated in NCIC 760 Manual, AmAg and American Growers paid Mr. Dailey for his

crop loss pursuant to the policy with the earliest application date." As I have already stated, I do not believe this is a correct application of the "fraud provision." I would reverse the trial court.

BRIEF FOR APPELLANT:

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