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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000628-MR

GLOBE AMERICAN CASUALTY COMPANY — APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE WILLIAM J. WEHR, JUDGE
ACTION NO. 00-CI-00009

MICHELLE E. DAVIDSON,
EARL R. KEMPLIN — APPELLEE

OPINION

VACATING AND REMANDING

** ** ** ** **

BEFORE: BARBER, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE: This is an appeal from a summary judgment granted to Michelle E. Davidson in an automobile negligence and insurance coverage case. We vacate the judgment and remand to the trial court.

On December 19, 1998, Appellee, Earl R. Kemplin (Kemplin), obtained insurance coverage on a 1988 Chevrolet Astro van with Appellant, Globe American Casualty Company, by making a

partial premium payment. On December 31, 1998, after Kemplin failed to pay the remainder of the premium when due, Appellant mailed him a notice of cancellation of his policy. Kemplin denies having received the notice. Effective January 17, 1999, Appellant canceled Kemplin's policy for non-payment of premium. Around February 11, 1999, Kemplin made another partial premium payment to Appellant, so Appellant temporarily reinstated the policy.

On March 19, 1999, Appellant mailed Kemplin a second notice of cancellation which notified Kemplin that his insurance coverage through Appellant would cease on April 4, 1999, due to non-payment of premium. The notice of cancellation referenced Kemplin's policy number; however, the notice did not specify that the policy covered the Chevrolet van. At the time Appellant mailed the notice, Kemplin was in the process of moving and denies having received the second notice.

On April 11, 1999, Kemplin was driving Appellee, Michelle Davidson (Davidson), to work in the Chevrolet Astro van when Kemplin had a one-car accident, injuring Davidson. Appellant denied coverage for Davidson's claimed loss because it took the position that it had effectively canceled Kemplin's insurance coverage as of April 4, 1999. Davidson filed a complaint in Campbell Circuit Court asserting a negligence action against Kemplin and a bad faith action against Appellant

as a result of Appellant's denial of her claim. In response, Appellant filed a declaratory action seeking a ruling by the court that Globe did not owe a duty of defense or indemnification to Kemplin because Appellant had effectively canceled Kemplin's insurance policy prior to the accident. Globe filed a motion for summary judgment on its declaratory action. Davidson filed a cross-motion for summary judgment, seeking a ruling that Appellant owed a duty of defense and indemnification to Kemplin.

Relying on Kentucky Farm Bureau Ins. Co. v. Gearhart, Ky. App., 853 S.W.2d 907 (1993), the trial court issued an order denying Appellant's motion for summary judgment and granting Davidson's cross-motion for summary judgment. The trial court held that Appellant's cancellation notice was defective because Gearhart requires the vehicle insured to be designated on the cancellation notice, and Appellant only provided the policy number. Subsequently, the trial court made its initial order denying Appellant's motion for summary judgment and granting Davidson's motion for summary judgment final and appealable, and this appeal followed.

The sole issue on appeal is the applicability of the holding in Gearhart to the facts of this case. Appellant presents three arguments in support of its assertion that it effectively canceled Kemplin's automobile insurance policy prior

to the accident. First, Appellant argues that its cancellation notice complied with KRS 304.20-040 which does not require a description of the vehicle. Moreover, Appellant argues that Gearhart was factually specific and does not require that a notice of cancellation for an insurance policy covering only one vehicle identify the vehicle. Finally, Appellant argues that equity principles require a reversal of the trial court's decision.

In response, Appellee asserts that the trial court ruled correctly that Kemplin's insurance was not canceled properly due to the defective notice of cancellation sent by Appellant. In addition, Appellee argues that Appellant does not have clean hands because it did not follow established principles of Kentucky insurance policy cancellation law, therefore it can not rest on principles of equity law.

Pursuant to Kentucky Rules of Civil Procedure (CR) 56.03, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The standard of review of a trial court's granting of summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the

moving party was entitled to judgment as a matter of law." Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996). Where the relevant facts are undisputed and the dispositive issue becomes the legal effect of those facts, our review is de novo. See Western Ky. Coca-Cola Bottling Co., Inc. v. Revenue Cabinet, Ky. App., 80 S.W.3d 787, 790 (2001). In this case, the contents of the cancellation notice are undisputed, and the dispositive issue is the legal effect of the notice; thus, our review is *de n*ovo.

KRS 304.20-040 governs the cancellation of automobile insurance policies. "'Policy' means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated" are of certain types. KRS 304.20-040(1)(a). Regarding cancellation of insurance,

> (2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:
>
> 1. Nonpayment of premium;
>
> ...
>
> (3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of

> cancellation; provided, however, that where cancellation is for nonpayment of premium, at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given.

Thus, under KRS 304.20-040, an insurer may cancel an automobile insurance policy for nonpayment of the premium. In order to effectively cancel the policy for nonpayment of the premium, the insurer must (1) mail or deliver a notice of cancellation to the insured; (2) giving at least fourteen (14) days' notice; and (3) providing the reason for the cancellation. There is no dispute that Appellant's cancellation notice complied with KRS 304.20-040.

As between Appellant and Kemplin, the insurance contract is consistent with KRS 304.20-040. The contract includes the following cancellation provisions:

> 3. If this policy has been in effect for 60 days or more, or if this is a renewal or continuation policy, we may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
>
> a. At least 14 days notice if cancellation is for nonpayment of premium;
>
> ...
>
> 4. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only
>
> a. For nonpayment of premium...

There is no dispute that Appellant's cancellation notice complied with the contract between the parties.

In addition to KRS 304.20-040 and the contract between the parties, we must consider the holding of Gearhart, a case decided by this court which addressed the issue of the proper cancellation by the insurer of an automobile insurance policy. See Gearhart, supra, 853 S.W.2d at 909. Appellee Davidson argues that Gearhart requires that a designation of the vehicle for which coverage is being canceled be provided in the actual notice of cancellation. We agree that dictum in the Gearhart opinion seems to suggest that the mere provision of a policy number on the notice of cancellation is not adequate notice to cancel an automobile policy; however, we believe the result was specific to the facts of the case based on the content of the cancellation notice at issue and the underlying circumstances.

In Gearhart, Gearhart had three separate automobile insurance policies with Farm Bureau covering three separate vehicles, one of which was an Isuzu. See Gearhart, supra, 853 S.W.2d at 908. Gearhart had full coverage on the Isuzu. Id. Eventually, Gearhart decided to sell the Isuzu and purchase a Ford van. Id. He went to his local Farm Bureau office to obtain only liability coverage on the Ford and to cancel the full coverage on the Isuzu. Id. The local office issued Gearhart a temporary certificate of insurance on the Ford, and

the temporary certificate had the same policy number as the Isuzu. Id. At this time, Farm Bureau advised Gearhart that no payment was necessary because he had a credit from the premium he had previously paid on the Isuzu. Id. at 908.

In February of 1988, as a result of some paperwork shuffling between Gearhart's local Farm Bureau office and Farm Bureau's Louisville office, Farm Bureau sent Gearhart a cancellation notice indicating that his coverage would end in fourteen days. Id. The notice indicated the policy number issued initially for the Isuzu and temporarily assigned to the Ford, but, more significantly, the cancellation notice also specifically indicated that it covered the Isuzu. Id. Gearhart disregarded the notice because he no longer owned the Isuzu. Id. at 908.

In April of 1988, Farm Bureau sent another notice to Gearhart stating that the policy number at issue was no longer in active status, and he could reactivate it. Id. "Significantly, this notice also referred to the covered vehicle as a 1982 Isuzu, and noted a copy to the bank which held the lien on it." Id. at 908.

Eventually, in October of 1988, an accident occurred involving Gearhart's Ford van. Id. at 909. Farm Bureau refused to pay or defend the claim. Gearhart settled the claim, and brought suit against Farm Bureau alleging that he was damaged by

the attempted cancellation of the automobile liability policy. Id. at 907. A jury found in favor of Gearhart, and Farm Bureau appealed asserting that it had properly canceled the policy. Id. at 909.

On appeal, this court applied the relevant sections of KRS 304.20-040 set out above and held that Farm Bureau's notice of cancellation was inadequate as a matter of law. Id. at 909. This court reasoned as follows:

> It takes no great leap of logic to conclude that the cancellation notice of a policy must include a proper designation of the vehicle covered. In fact, such would appear to be the plain meaning of the statute, which we must uphold. Moreover, requiring proper designation of the covered vehicle will serve to alert the ordinary and reasonable person that coverage is about to expire, unlike the mere indication of a policy number, which the vast majority of people simply do not know. As a result, the legislature must have intended to require proper designation of the covered vehicle for cancellation to be effective.

Id. at 909 (internal citations omitted).

We believe the fundamental issue in Gearhart as well as the instant case is the adequacy of notice to the insured that the insurer is canceling an automobile policy. Moreover, we distinguish Gearhart from this case based on the facts that Gearhart had three separate insurance policies with the same insurer for three separate vehicles, and the notice of cancellation that the insurer sent Gearhart designated a vehicle

that the insured no longer owned. We believe the court's discussion in Gearhart is limited to those facts.

In this case, however, there is no dispute that Kemplin only had one insurance policy with Appellant under which he insured one vehicle, and Kemplin does not contend that any information provided by Globe American in the cancellation was incorrect. In other words, there is no reason to conclude the cancellation was inadequate. In addition, Appellant's notice of cancellation complied with KRS 304.20-040 and the automobile insurance contract. Under these circumstances, we believe the trial court improperly granted summary judgment in favor of Michelle E. Davidson on the basis that the notice sent by Appellant to Kemplin was defective on its face because it only provided the policy number and did not designate that the cancellation was for a particular vehicle.

Because we conclude that the cancellation notice need not designate the automobile to be effective when the insured obtains a single insurance policy with the insured on a single vehicle, we do not consider the equitable arguments made by the parties on appeal.

Accordingly, the judgment of the Campbell Circuit Court is vacated for the foregoing reasons, and the case is remanded for proceedings consistent with this opinion.

SCHRODER, JUDGE, CONCURS.

BARBER, JUDGE, DISSENTS.

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