STATE OF MICHIGAN

COURT OF APPEALS

THOMAS SOLVENT COMPANY, THERMO-CHEM, INC., TSC TRANSPORTATION COMPANY, THOMAS DEVELOPMENT COMPANY, THOMAS SOLVENT COMPANY OF DETROIT, THOMAS SOLVENT COMPANY OF MUSKEGON, INC., THOMAS SOLVENT INC. OF INDIANA, RICHARD E. THOMAS and LETHA THOMAS,

Plaintiffs/Counter-defendants-Appellants/ Cross-Appellees,

v

CONTINENTAL CASUALTY COMPANY,

Defendant-Appellee/Cross-Appellant,

and

UNITED STATES FIDELITY AND GUARANTY COMPANY,

Defendant/Counter-plaintiff-Appellee/Cross-Appellant,

and

AUTO-OWNERS INSURANCE COMPANY, AETNA INSURANCE COMPANY, GREAT AMERICAN SURPLUS LINES INSURANCE COMPANY, ADMIRAL INSURANCE COMPANY, FIRST STATE INSURANCE COMPANY, GUARANTY NATIONAL INSURANCE COMPANY, GIBRALTAR CASUALTY COMPANY, HARTFORD ACCIDENT & INDEMNITY COMPANY, NORTHSTAR RE-INSURANCE COMPANY, CANADIAN UNIVERSAL INSURANCE COMPANY, NORTHBROOK EXCESS & SURPLUS INSURANCE COMPANY and ST. PAUL FIRE & MARINE INSURANCE COMPANY,

UNPUBLISHED
May 19, 1998

No. 192210
Calhoun Circuit Court
LC No. 90-002779 CK

Defendants.

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

In this declaratory judgment action, plaintiffs appeal as of right from the final judgments entered in favor of defendants Continental Casualty Company (Continental) and United States Fidelity and Guaranty Company (USF&G). Continental and USF&G have filed cross appeals. We affirm.

Plaintiffs challenge the trial court's findings of fact and conclusions of law regarding whether plaintiffs met their burden of proof in proving the terms of certain missing insurance policies. Plaintiffs argue that the trial court erred as a matter of law by applying the wrong legal standard with regard to the quantum of proof necessary to prove the terms of the missing policies. Plaintiffs also challenge the trial court's ultimate findings of fact. Plaintiffs' challenge regarding the quantum of proof required by the trial court involves a question of law, which we review de novo. *In re Rupert*, 205 Mich App 474, 479; 517 NW2d 794 (1994). A trial court's findings of fact after a bench trial are reviewed for clear error. MCR 2.613(C). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Andrews v Pentwater Twp*, 222 Mich App 491, 493; 563 NW2d 713 (1997).

We agree with the trial court that plaintiffs failed to prove the relevant terms of coverage that applied to the missing policies. The evidence indicated that plaintiffs' policies could have resulted from numerous different forms, endorsements and schedules. The trial court found that it was unable to determine the terms of plaintiffs' policies from the evidence produced. The trial court further found that it would have been pure speculation to conclude that defendants' policies provided coverage in this case. The trial court's finding that plaintiffs did not sufficiently prove the terms of the missing policies is not clearly erroneous.

We also reject plaintiffs' claim that the trial court erred as a matter of law by refusing to follow this Court's decision in *LeVere v Aetna Cas & Surety Co*, 208 Mich App 622; 528 NW2d 838 (1995). Plaintiffs contend that, under *LeVere*, they satisfied their burden of proving the essential terms and conditions of any policies they held with defendants Continental and USF&G. We disagree and find that this case is factually distinguishable from *LeVere*. The insurance questions in this matter are far more complex than those involved in *LeVere*. Furthermore, *LeVere* involved a motion for summary disposition, not findings of fact after a trial. For these reasons, the trial court did not err when it failed to reach the same result as in *LeVere*.

We believe that this case is more analogous to *Star Steel Supply Co v United States Fidelity & Guaranty Co*, 186 Mich App 475; 465 NW2d 17 (1990), which supports the trial court's ruling. As in *Star Steel*, plaintiffs were able to show that they had some form of insurance coverage during the years in question, but were unable to demonstrate the terms of any policies it may have had with defendants Continental and USF&G. The trial court correctly concluded that plaintiffs failed to sustain their burden of proving the terms of the policy and that any judgment in plaintiffs' favor would be based on pure speculation. *Id*. at 481.

Finally, we conclude that the trial court properly granted summary disposition to defendant USF&G on the policies plaintiffs were able to produce for 1976 through 1978, based upon the parties' stipulation.

In light of our disposition of the foregoing issues, it is unnecessary to address the arguments raised by defendants in their cross appeals.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert P. Young, Jr.