

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICKY HICKS and ROXANNE HICKS,

Plaintiffs-Appellees,

and

BRIAN GOODSSELL,

Plaintiff,

v

AUTO CLUB GROUP INSURANCE  
COMPANY,

Defendant-Appellant.

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UNPUBLISHED

May 3, 2011

No. 295391

Manistee Circuit Court

LC No. 08-013074-CK

Before: O'CONNELL, P.J., and K.F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this insurance dispute, defendant appeals as of right from the trial court's decision in favor of Roxanne Hicks after a bench trial. Defendant argues that the trial court erred by holding that Roxanne Hicks was an innocent coinsured, entitled to recover on the insurance policy issued by defendant. We reverse.

**I. FACTS**

In 2006, Roxanne Hicks and Brian Goodsell purchased the subject property in Bretheren, Michigan, by means of a land contract. Roxanne testified that she purchased the property with Goodsell because her husband Ricky had to stay in Dearborn, Michigan, to finish working his old job and because he had poor credit. The property encompassed forty acres and contained a pole barn, a garage, a duplex cabin, another cabin, and a three-bedroom house. The house required some repairs before plaintiffs could move in, so they put most of their belongings in the pole barn for storage. Once the repairs were finished, plaintiffs and their children moved into the

house. Roxanne testified that they moved most of their belongings into the house, including their major furniture. On December 18, 2006, a week after the family moved in, a fire destroyed the home and most of its contents. Plaintiffs Hicks<sup>1</sup> had four children at the time of the fire, and Roxanne discovered she was pregnant with their fifth child shortly after the fire.

Plaintiffs filed a claim on their homeowner's insurance policy, claiming that over \$70,000 worth of personal property was lost in the fire, along with the house. Defendant denied plaintiffs' insurance claim after an investigation by defendant and the State Police revealed that the house had contained very few items when it burned. The insurance policy provides that it is entirely "void if an insured person has intentionally concealed or misrepresented any material fact or circumstance relating to: this insurance; the Application for it; or any claim made under it." Plaintiffs Hicks then instituted this suit in an attempt to recover on the policy.

Following a bench trial, the trial court found that Ricky Hicks had intentionally misrepresented and concealed material facts, but that Roxanne Hicks had not, and that Roxanne could recover as an innocent coinsured. On appeal, defendant argues that the facts do not support the trial court's conclusion that Roxanne Hicks was an innocent coinsured.

## II. ANALYSIS

The Court reviews findings of fact from a bench trial for clear error. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004); MCR 2.613(C). "A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court is left with the definite and firm conviction that a mistake has been made." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003).

The trial court specifically found that Roxanne Hicks was extremely distressed by the fire because she lost a niece and nephew in another fire years earlier. The court also found that Roxanne's emotions were further affected by discovering that she was pregnant shortly after the fire. The court found that although large portions of the property lists submitted were in Roxanne's handwriting, she had simply followed Ricky's directions about what items to claim.

However, Roxanne herself testified about the contents of the house that were lost in the fire. Roxanne testified that she helped create the lists of lost property, and that she looked up replacement values for many of the items. Neither Roxanne nor Ricky testified that Roxanne simply followed Ricky's directions in helping to list items lost in the fire. Indeed, Ricky testified that he needed his wife's help to create the lists. Under oath, Roxanne specifically identified various property in the house at the time of the fire, including a firearm, sofas, chairs, a coffee table, an antique radio, a stereo, a record player, a clothes press, linens, toiletries, a hanging wall mirror, oil lamps, computer equipment, toys, a dryer, clothing, a vacuum cleaner, beds, dressers or armoires, nightstands, an Xbox 360, a 30-inch TV, stove, two refrigerators, a freezer, and

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<sup>1</sup> Brian Goodsell was not listed on the insurance policy at issue and was included in the litigation only because of his ownership interest in the property. Goodsell does not seek any recovery.

some DVDs. In addition, she testified with a fair degree of certainty to the locations of a number of these items. The trial court found, based on the testimony of the State Police fire investigator and the contractor who subsequently demolished the house that many of these items were not actually in the house.

In sum, given Roxanne's own testimony and the corresponding exhibits, it does not seem possible that she could have been unaware that most of the items on the list were not actually in the house at the time of the fire. This Court is mindful of deferring to the trial court's superior position to assess witness credibility. MCR 2.613(C). However, an appellate court is compelled to reverse the outcome of a bench trial when the exhibits and testimony overwhelmingly contradict the trial court's conclusion. See, e.g., *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 339; 247 NW2d 813 (1976); see generally Michigan Court Rules Practice (5th ed), § 2613.6, p 555. Here, our review of the record leaves us with the definite and firm conviction that the trial court clearly erred.

Because of our disposition of the above issue, we need not address the other issues and arguments raised on appeal.

Reversed.

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly