STATE OF MICHIGAN

COURT OF APPEALS

PETER HORWOOD and IRINA HORWOOD,

Plaintiffs-Appellants,

v

NORTH AMERICAN TITLE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 22, 2020

No. 350840
Livingston Circuit Court
LC No. 19-030217-CZ

Before: O'BRIEN, P.J., and M. J. KELLY and REDFORD, JJ.

PER CURIAM.

Plaintiffs, Peter and Irina Horwood, appeal by right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(8) and denying plaintiffs' cross-motion motion for summary disposition under MCR 2.116(C)(9) and (10). Because there are no errors, we affirm.

I. BASIC FACTS

Plaintiffs acquired title to property in Green Oak Township via warranty deed and purchased a title insurance policy from defendant. Plaintiffs' property bordered property owned by their neighbors, the Roses, and access to a portion of plaintiffs' property was only available by crossing part of the Rose property. Accordingly, the legal description of plaintiffs' property stated that the land was "subject to an easement for a 33-foot roadway to be used in common with others." The Roses claimed that plaintiffs did not have an easement and alleged that plaintiffs illegally trespassed on their property, spun the tires of a pickup truck while holding a middle finger up, caused damage to the Roses' septic field and trees, removed portions of the Roses' fence, planted vegetation, and placed cameras on the property line facing the Roses' house. The Roses filed an eight-count complaint against plaintiffs for quiet title, trespass, malicious destruction of property, conversion, negligence, invasion of privacy, intentional infliction of emotional distress, and injunctive relief. Plaintiffs sought indemnification from defendant for all counts, but defendant determined that it could defend against only counts I and VIII. Defendant concluded that the only covered risk implicated by the complaint was that plaintiffs would not have access to and from the

property. Further, defendant noted that the policy specifically exempted risks that occurred after the policy date and risks that were created, allowed, or agreed to by plaintiffs.

Subsequently, defendant negotiated a settlement agreement whereby the Roses would dismiss their complaint in exchange for a 50% reduction in the size of the easement. Although plaintiffs' personal lawyer advised them against signing the agreement, defendant reminded plaintiffs that it had a contractual right under the insurance policy to negotiate a settlement and had the right to terminate coverage if plaintiffs did not cooperate with the settlement. Plaintiffs signed the agreement and filed suit against defendant, arguing that defendant breached the insurance policy contract and seeking injunctive relief. Plaintiffs also argued that defendant was required to reimburse them for the lost value of the reduced easement.

The circuit court held that counts II to VII of the Rose complaint were not based on any covered risks under the insurance policy and were excluded as deliberate actions of plaintiffs. The court also concluded that defendant did not owe a duty to compensate plaintiffs for the reduced size of the easement because the size of the easement was not insured and plaintiffs still had access to their property. Accordingly, the court granted defendant's motion for summary disposition and denied plaintiffs' cross-motion for summary disposition.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Plaintiffs argue that the circuit court erred by granting defendant's motion for summary disposition because counts II to VII of the Rose complaint were based on other covered risks in the insurance policy and were not specifically excluded. Plaintiffs also argue that defendant was required to indemnify them for the value of the reduced easement under the insurance policy. We review de novo a trial court's grant or denial of a motion for summary disposition. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). A motion for summary disposition under MCR 2.116(C)(8) rests on the legal sufficiency of a claim and must be decided on the pleadings alone. *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 312; 696 NW2d 49 (2005). The trial court must accept as true all factual allegations and reasonable inferences or conclusions that might be drawn from those facts, and may only grant a motion for summary disposition when "the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 670; 760 NW2d 565 (2008) (quotation marks and citation omitted).

B. ANALYSIS

The title insurance policy provided for 32 covered risks. Both the circuit court and defendant concluded that only one covered risk applied in this case—the risk that the insured does not have actual vehicular and pedestrian access to and from the property. Plaintiffs argue that following covered risks also apply: (1) "Someone else owns an interest in Your *Title*;" (2) "Someone else has rights affecting Your *Title* because of leases, contracts, or options;" (3) "Someone else has a right to limit Your use of the *Land*;" and (4) "Your *Title* is defective because of a defective judicial or administrative proceeding." (Emphasis added). Plaintiffs argue that these

covered risks apply because the easement falls under the definitions of "title" and "land" in the policy.

"An insurance company has a duty to defend its insured if the allegations of the underlying suit arguably fall within the coverage of the policy." *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 74; 755 NW2d 563 (2008) (quotation marks and citation omitted). The duty to defend an insured party arises from the language of the insurance contract and is construed using established principles of contract construction. *Id*. The court must effectuate the intent of the parties primarily by looking at the language of the contract. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467, 469; 663 NW2d 447 (2003). When interpreting the parties' agreement, the court should read the contract as a whole and give ordinary meaning to all terms in the policy. *Century Surety Co v Charron*, 230 Mich App 79, 82; 583 NW2d 486 (1998). The court must interpret language according to definitions in the contract and enforce unambiguous language as written. *Id.* at 82-83. Exclusionary clauses are strictly construed in favor of the insured, but coverage is lost if an exclusion applies to an insured's claims. *Id.* at 83. "Clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume." *Id.* "It is the insured's burden to establish that his claim falls within the terms of the policy." *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 172; 534 NW2d 502 (1995). However, doubt over coverage must be resolved in the insured's favor. *Id*. at 161.

An easement is a limited property interest that represents the right to use another's land for a specific purpose. *Smith v Straughn*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 345391); slip op at 3. "An easement does not displace the general possession of the land by its owner, but merely grants the holder of the easement qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement." *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). "The land burdened by the easement is the servient estate, and the land benefited by the easement is the dominant estate." *Smith*, ___ Mich App at ___; slip op at 3.

In this case, the insurance policy defined "land" as "the land or condominium unit described in paragraph 3 of Schedule A and any improvements on the Land which are real property;" and defined "title" as "the ownership of Your interest in the Land, as shown in Schedule A." Plaintiffs argue that a plain reading of the definitions indicates that the easement is included under "land" and "title." However, the insurance policy separately defines easement as "the right of someone else to use the Land for a special purpose." Courts must give effect to every word and phrase in a contract to avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp*, 468 Mich at 468. Based on the plain language of the title insurance policy, the easement is considered a separate term that does not fall under the definitions of "land" or "title." Rather, it refers to plaintiffs' right to use the Roses' "land" for a special purpose. Therefore, the easement is not included in the description of plaintiffs' insured "land" or "title."

Because the easement is not plaintiffs' "land" or "title" for purposes of the title insurance policy and the covered risks identified by plaintiffs are inapplicable.[1]

Moreover, even if the covered risks identified by plaintiffs were implicated by counts II to VII of the Rose complaint, the trial court did not err by determining that coverage for those counts was also specifically excluded under the policy. The actions which gave rise to counts II to VII of the Rose complaint were all based on risks specifically incurred by plaintiffs' conduct, not the title itself. "Clear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume," *Century Surety*, 230 Mich App at 83, and in this case, the insurance policy exempted from coverage risks that were created or allowed by plaintiffs. Defendant did not assume the risk that plaintiffs would purposefully enter onto Rose property, spin the tires of their truck, stake off the easement, remove portions of the Roses' fence, destroy portions of the Roses' septic field and tree roots, and place trail cameras on the property line. Further, plaintiffs' actions occurred after the policy date, which was also specifically exempted under the insurance policy. Therefore, counts II to VII of the Rose complaint were excluded from coverage under the title insurance policy.

Next, plaintiffs argue that the settlement agreement with the Roses constituted a contract that triggered the risk that "someone else has rights affecting your title because of leases, contracts, or options," so defendant owed plaintiffs a duty to reimburse them for the reduced size of the easement. However, because the easement did not fall under the definition of "title" in the insurance policy, this risk is not applicable to plaintiffs' claim. Further, "an insurance company cannot be liable for a risk it did not assume," *Century Surety*, 230 Mich App at 83, and in this case, there is no indication that defendant ever agreed to insure the size of the easement. Therefore, the circuit court did not err by holding that defendant did not owe plaintiffs a duty to compensate for the reduction of the easement.

Plaintiffs also argue that because defendant "forced" them into the settlement agreement with the Roses, defendant should be liable for the lost value of the easement property resulting from the agreement. However, plaintiffs cite no authority that supports this assertion. "An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority." *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015). Moreover, there is no evidence that plaintiffs were "forced" to sign the settlement agreement. Under the terms of the insurance policy, defendant had the option to negotiate a settlement and withdraw representation if plaintiffs chose not to cooperate with the negotiated settlement agreement. After defendant reminded plaintiffs of those terms, plaintiffs chose, against the advice of their own lawyer, to sign the settlement agreement. Defendant had no duty to reimburse plaintiffs for the reduced size of the easement.

[1] This interpretation also coincides with how the easement functions. Although plaintiffs have a limited property interest in the easement, that interest does not displace the Roses' title to the property and does not transfer the title to plaintiffs. See *Matthews*, 288 Mich App at 37.

Affirmed. Defendant may tax costs as the prevailing party. MCR 7.219(A).

/s/ Colleen A. O'Brien
/s/ Michael J. Kelly
/s/ James Robert Redford