STATE OF MINNESOTA
IN COURT OF APPEALS
A11-444

Gaza Beef, Inc., an Iowa corporation,
Respondent,

vs.

Grinnell Mutual Reinsurance Company,
Appellant.

Filed August 22, 2011
Reversed
Connolly, Judge

Mower County District Court
File No. 50-CV-10-594

Jeffrey A. Hanson, Hanson Law Firm, Rochester, Minnesota (for respondent)

Curtis D. Ruwe, Beth A. Jenson Prouty, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant insurer challenges the district court's grant of summary judgment, declaring that appellant's liability policy provided coverage for property damage to respondent's cattle based on a custom-farming endorsement despite a stated policy exclusion for damage to property in the care, custody, or control of the insured. Because the district court erred by determining that the exclusion did not apply and that the policy provided coverage for damage to respondent's property, we reverse.

FACTS

Robert Bartel owns a beef-cattle feedlot in Blooming Prairie. He is in the business of feeding cattle owned by others until the cattle are ready for market. From 2005–2007, Bartel received and fed cattle for respondent Gaza Beef, Inc., under an oral contract. John Ulrich contracted with Gaza Beef and supplied feed for Bartel's use in feeding the cattle. Bartel performed the labor in feeding the cattle, including adding the percentage of each foodstuff to be placed in the overall mix. Bartel also occasionally received feeding instructions from an owner of Gaza Beef.

Bartel indicated that Ulrich recommended, and Bartel fed, the cattle with "a hundred percent by-products," which was less-expensive feed. Sometimes Bartel had a problem with Ulrich delivering feed on a timely basis. According to Bartel, Ulrich told him that he could then substitute "ethanol syrup." At times, Bartel did not receive delivery of a consistent supply of chaff, which is important for cattle digestion, and Ulrich would bring another substitute feed, causing an abrupt change of diet for the cattle.

In 2006, Bartel observed that, when the diet was changed, the cattle began having health problems with acidosis, which resulted in symptoms of sore feet, trouble walking, rough hair coats, and sometimes death. Gaza Beef ultimately sustained damages resulting from excess mortality of the cattle and their failure to reach expected market weight in a timely manner.

At the time Bartel was feeding cattle for Gaza Beef, his business was insured under a liability policy with appellant Grinnell Mutual Reinsurance Company. Under a section labeled "Liability to Public," the policy provides that it will pay "all sums arising out of any one loss which any 'insured person' becomes legally obligated to pay as damages because of 'bodily injury' or 'property damages' covered by this policy." An exclusions section labeled "Under any of the Coverages" provides that:

> 6. "We" do not cover "bodily injury" or "property damage" arising out of:
>
> a. "custom farming" operations of any "insured person" if the "total gross receipts" from all "custom farming" exceed $2,000 in the twelve months of the prior calendar year. . . .

The policy defines "custom farming" as "any activity arising out of or connected with . . . care or raising of 'livestock' or 'poultry' by any 'insured person' for any other person or organization in accordance with a written or oral agreement." Additional exclusions listed "Under Liability to Public" state:

> 2. "We" do not cover performance guarantees of crops or "livestock."
> . . . .
>
> 5. "We" do not cover "property damage" to property rented to, leased to, occupied by, used by, or in the care, custody, or control of any "insured persons" or any persons living in the household of an "insured person."

Bartel also purchased, and was covered by, a "Custom Feeding Endorsement" to the policy. That endorsement provides in part that:

> *In consideration of the premium charged, exclusion 6.a under this section of the policy does not apply if:*
>
> (1) The "bodily injury" or "property damage" arises from the activities of care or raising of "livestock" or "poultry" by any "insured person" for any other person or organization in accordance with a written or oral agreement [.]
>
> . . . .
>
> *All other terms and provisions of the policy apply.*

(Emphasis added).

In 2007, Gaza Beef brought a lawsuit in district court, seeking damages and alleging claims based on breach of contract, negligence, and fraud against Ulrich and a claim based on negligence against Bartel. Gaza Beef and Bartel stipulated to a *Miller-Shugart* agreement, which allowed Gaza Beef to seek a judgment against Grinnell for $250,000. The district court issued its order approving the agreement. Gaza Beef then brought this declaratory-judgment action against Grinnell, asserting Bartel's negligence in feeding the cattle and seeking damages for the excess days required for the cattle to reach market and for their excess mortality rate. Grinnell responded that its policy did not provide coverage for the claimed losses, based on the stated policy exclusion for damage to property in the "care, custody, or control" of the insured.

The parties submitted cross-motions for summary judgment. Gaza Beef argued that Bartel had coverage for custom-feeding operations under the custom-feeding endorsement because that endorsement superseded exclusion 5 of the policy—the "care,

custody, or control" exclusion. Grinnell argued that the "care, custody, or control" exclusion still applied because the custom-feeding endorsement provided only that exclusion 6.a. did not apply, the endorsement did not refer to exclusion 5, and the endorsement stated that all other policy provisions remained unchanged.

The district court initially denied Grinnell's motion for summary judgment and granted Gaza Beef's motion for summary judgment in part and reserved it in part. The district court concluded that Gaza Beef had coverage under the policy because the deaths of the cattle constituted property damage, and the custom-feeding endorsement provided coverage for property damage arising out of the care and raising of livestock. The district court also noted that Gaza Beef's claim for damages resulting from the extended time that some cattle required to reach marketability was "barred by the exclusion [for] performance guarantees of livestock." Based on this statement, Gaza Beef sought reconsideration of the district court's conclusion that the performance-guarantee exclusion applied, arguing that no evidence showed the existence of a performance guarantee.

After reconsideration, the district court issued its amended order, memorandum, and judgment, granting Gaza Beef's motion for summary judgment and denying Grinnell's motion for summary judgment. The district court first concluded that an interpretation determining that the "care, custody, or control" exclusion applied, despite the custom-feeding endorsement, would lead to a harsh and absurd result. The district court next concluded that the claimed damage in the *Miller-Shugart* settlement was within Grinnell's coverage and, finally, that because no portion of the record established

that any performance guarantees existed, the performance-guarantee exclusion did not apply. The court therefore concluded that, pursuant to the *Miller-Shugart* agreement, Grinnell was liable to Gaza Beef for damages in the amount specified in that agreement. This appeal follows.

D E C I S I O N

On appeal from summary judgment, a reviewing court asks whether there are any genuine issues of material fact and whether the district court erred as a matter of law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court views the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). But the nonmoving party must present evidence that is "sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). We "review de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

"The interpretation of an insurance policy is a question of law reviewed de novo." *Wanzek Constr., Inc. v. Employers Ins. of Wausau*, 679 N.W.2d 322, 324 (Minn. 2004). "General principles of contract interpretation apply to insurance policies." *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 249 (Minn. 1998). The language in a policy governs, and if that language is ambiguous, it must be interpreted in favor of the insured. *Wanzek*, 679 N.W.2d at 329. But absent ambiguity, the language of an

insurance policy must be given its usual and accepted meaning. *Bobich v. Oja*, 258 Minn. 287, 294, 104 N.W.2d 19, 24 (1960). Endorsements and the policy must be construed together to give full effect to all provisions. *Id.* at 294-95, 104 N.W.2d at 24. If provisions in the body of the policy conflict with an endorsement, the provision in the endorsement governs. *Id*. The district court concluded that, because the purpose of the custom-farming endorsement was to provide coverage for Bartel's negligent acts that resulted in property damage arising out of his custom-feeding operation, a determination that the endorsement would provide virtually no coverage for this damage would lead to a harsh and absurd result, and the endorsement provided at least partial coverage for the excess mortality of Gaza Beef's cattle.

Gaza Beef argues that the custom-farming endorsement conflicts with the general provisions of the policy, so the endorsement supersedes those provisions, and the policy provides coverage for the asserted property damage to the cattle. We disagree. If insurance-policy language is clear and unambiguous, the court must give that language its accepted and usual meaning and cannot redraft the contract. *Id*. The plain language of the custom-feeding endorsement states that it applies only to exclusion 6.a. and that it does not change the other portions of the policy, which include the section-5 exclusion. Exclusion 6.a. refers to "'bodily injury' or 'property damage' arising out of: 'custom farming' operations of any 'insured person'. . . ." But the custom-farming endorsement expressly states that, "all other terms and provisions of the policy apply." Among those provisions is exclusion 5 for "'property damage'" to "property rented to, leased to, occupied by, used by, or in the care, custody, or control of any 'insured person' or any

persons living in the household of an 'insured person.'" Because the custom-farming endorsement expressly limits its application to exclusion 6.a., it is not inconsistent with the general policy provisions, including the "care, custody, or control" exclusion.

Minnesota appellate courts have not considered this issue, but the Iowa Supreme Court has reached the same result in construing similar policy provisions. In *Ferguson v. Allied Mut. Ins. Co.*, 512 N.W.2d 296 (Iowa 1994), that court affirmed summary judgment denying coverage under a farm-liability policy for property damage to hogs sustained in a custom-farming operation. The insurance policy in *Ferguson* also contained a "care, custody, or control" exclusion, as well as an incidental-activities endorsement that listed coverage for "Custom Livestock Feeding Operation." *Id*. at 298. The policy was found not ambiguous because the incidental-activities endorsement did not explicitly alter the scope of coverage under the policy, which included the "care, custody and control" exclusion. *Id*. at 300. As in *Ferguson*, the custom-feeding endorsement in Grinnell's policy is not ambiguous and by its plain terms, it does not alter the portion of the policy that excludes coverage for property within the insured's care, custody, or control. Therefore, because the record establishes that the cattle were under Bartel's care and control when they were damaged, the policy does not provide coverage for the insured's claimed loss.

Gaza Beef argues that Grinnell's construction of the custom-feeding endorsement would lead to a harsh and absurd result because that endorsement necessarily applies to the cattle, which were in the insured's custody and control as part of the custom-farming operation. *See Employers Mut. Liab. Ins. Co. v. Eagles Lodge*, 282 Minn. 477, 479-80,

165 N.W.2d 554, 556 (1969) (stating that policy terms should not be so strictly construed as to lead to "a harsh and absurd result"). But Grinnell's policy provides liability insurance, which is a "type of insurance [that] indemnifies one from liability to third persons as contrasted with insurance coverage for losses sustained by the insured." *Reinsurance Ass'n of Minn. v. Johannessen*, 516 N.W.2d 562, 565 (Minn. App. 1967) (quotation omitted), *review denied* (Minn. Aug. 24, 1994). An exclusion for damage to property in the "care, custody, or control" of the insured is a standard exclusion in general liability insurance. It has the purpose of "prevent[ing] . . . general liability insurance from becoming tantamount to property insurance when property is in the hands of a bailee or lessee, or is otherwise in the custody and control of a named insured and therefore subject to damage or loss due to the named insured's own acts or omissions." 21 Eric Mills Holmes, *Holmes' Appleman on Insurance* § 132.9[B], at 146-47 (2d ed. 2002); *see also Ohio Cas. Ins. Co. v. Terrace Enters., Inc.*, 260 N.W.2d 450, 463 (Minn. 1977) (stating that in determining whether such an exception applies, courts examine whether the property is real or personal property; its location, size, shape, and other characteristics; and the insured's duties relating to the property).

When the provisions of an insurance policy are unambiguous, the court may not impose on an insurance company a risk for which it did not contract. *Warren v. Am. Family Mut. Ins. Co.*, 418 N.W.2d 526, 528-29 (Minn. App. 1988), *review denied* (Minn. Apr. 15, 1988). "The distinction between third-party and first-party benefits is crucial when determining the validity of a policy exclusion." *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 250 (Minn. 1988). Grinnell's liability policy, containing a

custom-feeding endorsement, provides third-party coverage for damage in situations different from that presented here—for instance, if a person is injured operating farm machinery on the custom-feeding premises, or contracts a food-borne illness traceable to the custom-feeding operation. But the policy does not provide coverage for damage sustained to the insured's property when that property is under the insured's care or control; to obtain such coverage, a person instead purchases a first-party property-insurance policy. Therefore, although the coverage provided under Grinnell's policy may be narrow, exclusion of coverage in this fact situation does not lead to an absurd result.

Gaza Beef also argues that the doctrine of reasonable expectations supports the district court's grant of summary judgment. This doctrine "is generally applied to protect individuals where the insurance policy terms have been misrepresented or misunderstood, or where legal technicalities would defeat coverage which the insured reasonably believed was in place." *Reinsurance Ass'n of Minn.*, 516 N.W.2d at 565-66 (citing *Atwater Creamery v. W. Nat'l Mut. Ins.*, 366 N.W.2d 271, 277-79 (Minn. 1985)). But the doctrine of reasonable expectations generally applies only if a policy contains ambiguous language or in an "extreme situation[]," as when the policy contains a hidden exclusion. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 49 (Minn. 2008). Neither of these situations exists here. Therefore, we conclude that the district court erred by granting summary judgment in favor of Gaza Beef, based on its conclusion that the "care, custody, or control" exclusion did not apply.

Because we have concluded that the "care, custody, and control" exclusion precludes all of Gaza Beef's property-damage claims, we need not consider the parties'

additional arguments relating to the performance-guarantee exclusion of the policy or those relating to the reasonableness and enforceability of the *Miller-Shugart* agreement. *See, e.g.*, *Alton M. Johnson Co. v. M.A.I. Co.*, 463 N.W.2d 277, 279 (Minn. 1990) (stating that "[i]f there is found to be no coverage for the *Miller-Shugart* judgment, that ends the matter; there is no recovery against the insurer and the reasonableness of the settlement becomes a moot issue").

Reversed.