IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-364

Filed: 17 November 2015

Henderson County, No. 13 CVS 121

NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, Plaintiff,

v.

JEREMIAH JARVIS, MELISSA SHULER, JARRETT LANCE CARLAND, ELANA BARNETT CARLAND, and NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY, Defendants.

Appeal by Defendants from order entered 9 October 2014 by Judge Tommy Davis in Henderson County Superior Court. Heard in the Court of Appeals 23 September 2015.

William F. Lipscomb for Plaintiff-Appellee.

Gary A. Dodd for Defendants-Appellants.

INMAN, Judge.

This case involves a dispute over insurance coverage arising from a single vehicle accident causing serious injuries. At issue are four auto insurance policies, one of which identifies the driver and the vehicle involved in the accident as insured, and three of which do not list the driver or the vehicle, but list members of the driver's extended family. After careful review, we hold that language in the policy listing the driver as an insured provides coverage limited to $100,000 and prohibits the aggregation or "stacking" of individual damage claims for coverage greater than that

amount. We further hold that because the driver was not a resident of the household covered by the other three policies, and because the vehicle he was driving was not listed in any of the other three policies, those policies provide no insurance coverage for him or his passenger. For these reasons, we affirm the trial court's order.

Defendants-Appellants Jeremiah Jarvis ("Jeremiah") and Melissa Shuler ("Melissa"), Jeremiah's mother, (collectively, Jeremiah and Melissa are referred to as "Defendants-Appellants") appeal the order granting Plaintiff-Appellee North Carolina Farm Bureau Mutual Insurance Company's ("Plaintiff-Appellee's") motion for summary judgment and denying Defendants-Appellants' motion for summary judgment. On appeal, Defendants-Appellants argue that: (1) policy no. APM 4967687 provides bodily injury liability coverage in the amount of $150,000 because Defendants-Appellants were entitled to aggregate or "stack" the $50,000 coverage for each vehicle listed in the Declarations; (2) policy nos. APM 4869957, BAP 2091039, and APM 4853984 also provide bodily injury liability coverage because Jarrett Lance Carland ("Jarrett"), the driver of the vehicle, was a resident of his father's house and, thus, would be covered under the terms of those policies.

Factual and Procedural Background

On 16 August 2009, Jarrett was driving a 1997 Ford Explorer owned by his mother, Defendant Elana Barnett Carland ("Elana").[1] Jeremiah was a passenger in

[1] Although Elana and Jarrett are Defendants in Plaintiff-Appellee's declaratory judgment action, neither she nor Jarrett is a party to the current appeal.

the vehicle at the time of the accident. Jarrett lost control of the vehicle, and it went off the road, striking a tree. Both Jeremiah and Jarrett sustained serious medical injuries. Jarrett's injuries were especially severe, and his post-accident injuries resulted in a guardian *ad litem* being appointed on his behalf.

As a result of the accident, in December 2010, Defendants-Appellants filed a lawsuit against Jarrett and Elana ("the personal injury action"), which is not the subject of the current appeal, alleging gross negligence and seeking damages based on Jeremiah's physical injuries.[2] Defendants-Appellants had the opportunity in the personal injury action to depose Elana about her divorce from and custody arrangement with Charles Ray Carland ("Charles"), Jarrett's father. They also deposed Jeremiah about Jarrett's relationship with his father. Elana stated that although she shared joint custody with Charles when they separated in 2003 and divorced in 2004 and that the custody arrangement is still "in effect," Jarrett spent no time with Charles nor did he keep any possessions at his father's home. According to Elana, although Jarrett may have spent two nights with his father within a four-month period after the divorce, Jarrett never spent the night again at Charles's house after that. Furthermore, Elana testified that Jarret spent no time at his father's house after Charles remarried in 2004.

[2] The lawsuit, case no. 10 CVS 2185 filed in Henderson County Superior Court, is not the subject of the current appeal and remains pending in the trial court.

At issue in this case are four insurance policies, all underwritten by Plaintiff-Appellee. Policy no. APM 4967687 ("the First Policy") covers three vehicles, including the 1997 Ford Explorer that Jarrett was driving at the time of the accident. On its "Declarations" page, the First Policy listed three covered drivers: Jarrett, Elana, and Jarrett's sister Victoria Carland. The First Policy stated that its limits of liability included $50,000 for bodily injury for each person, with a total limit of $100,000 per accident. The property damage was limited to $50,000 per accident. The First Policy also provided uninsured and underinsured liability in the amount of: "BI $50,000 EA PER $100,000 EA ACC." Under the First Policy's "Limit of Liability" provision, the policy explicitly stated that "the limit of liability shown in the Declarations for each accident for Bodily Injury Liability Coverage is our maximum limit of liability for all damages for bodily injury resulting from one auto accident." The policy further provides: "This is the most we will pay as a result of any one auto accident regardless of the number of: 1. Insureds; 2. Claims made; 3. Vehicles or premiums shown in the Declarations; or 4. Vehicles involved in the auto accident."

Policy no. APM 4869957 ("the Second Policy") lists the insureds as Charles and Shelia Carland ("Sheila"), Charles's second wife, and Christian and Cassidy Price, Charles's step-children and Sheila's children from an earlier marriage. The policy identifies two covered vehicles, neither of which is the 1997 Ford Explorer. The Declarations page lists the following limits of liability: $50,000 for bodily injury for

each person, $100,000 per accident. It notes that an "insured" includes: "[y]ou or any family member." "You" is defined as the "named insured" listed in the Declarations and the "named insured's" spouse if the spouse is a resident of the same household. Most relevant to this case, a "family member" is defined as "a person related to [the "named insured" or the "named insured's" spouse] by blood, marriage or adoption who is a resident of [the "named insured's"] household."

Policy no. APM 4853984 ("the Third Policy") was issued in the name of Cassidy and Christian Price, Charles's step-children. At the time of the accident, Cassidy and Christian lived with Charles and Shelia. The definition of "insured" is the same under the terms of the Third Policy as it is in the Second Policy.

Policy no. BAP 2091039 ("the Fourth Policy") is issued to Carlands Dairy Inc. ("Carlands"),a dairy farm currently owned and operated by Charles. The covered vehicle listed under "Item Three" of the policy is a Ford 150 truck and the named insured is Charles. The Fourth Policy states that it will pay "all sums an 'insured' legally must pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto'." Under "Item Two" on the "Declarations" page, the symbol "07" is listed as a "Covered Item." The Fourth Policy explains that the "07" designation means that the "covered automobiles" only includes "those 'autos'

described in Item Three of the Declarations for which a premium charge is shown" for liability purposes.

On 28 January 2013, Plaintiff-Appellee filed a complaint for a declaratory judgment regarding its obligation under all four of the insurance policies, which is the subject of the current appeal. Plaintiff-Appellee alleged that it had offered Melissa and Jeremiah the $50,000 per person limit to each of them under the First Policy but that Defendants-Appellants had refused to accept the offer. Defendants-Appellants argued that because there were three vehicles listed on the "Declarations" page of the First Policy, Defendants-Appellants were entitled to aggregate or "stack" the $50,000 per person limit for each of the three listed vehicles and that the First Policy provides bodily injury coverage in the amount of $150,000. With regard to the Second and Fourth policies, Defendants-Appellants claimed, and Plaintiff-Appellee disputes, that Jarrett was a "resident" of Charles's house. Thus, according to Defendants-Appellants, Melissa and Jeremiah were entitled to liability coverage under the Second and Fourth Policy because Jarrett was a "family member" of Charles and, thus, would be covered for liability purposes by the policies. With regard to the Third Policy, and similar to Defendants-Appellants' argument with regard to the Second Policy, they contend that Jarrett was a resident of Cassidy and Christian Price's household. Thus, they contended that they also were entitled to liability coverage for bodily injury under the Third Policy.

On 31 January 2014, Plaintiff-Appellee moved for summary judgment on its declaratory judgment complaint, arguing that the affidavits attached to its motion as well as the depositions of Jeremiah and Melissa, taken in the personal injury action against Jarrett and Elana, show that Plaintiff-Appellee was entitled to a declaratory judgment as a matter of law. On 14 October 2014, the trial court granted summary judgment in favor of Plaintiff-Appellee. Defendants-Appellants timely appeal.

Standard of Review

Our standard of review of an appeal from summary judgment on a declaratory judgment action "is *de novo*; such judgment is appropriate only when the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." *Integon Nat. Ins. Co. v. Helping Hands Specialized Transp., Inc.*, __ N.C. App. __, __, 758 S.E.2d 27, 30 (2014) (internal quotation marks omitted).

Analysis

I. Whether the First Policy Allows Aggregation or "Stacking" of the Limits of Liability

As noted above, the First Policy lists three "covered vehicles" and, for each, Elana paid a separate premium. Defendants-Appellants, citing *Woods v. Nationwide*, 295 N.C. 500, 246 S.E.2d 773 (1973), claim that "[w]here insurance coverage and premiums relate to separately listed vehicles, the policy holder may reasonably conclude that the premiums he paid for each vehicle should be applied to a specific

loss/accident." In general terms, Defendants-Appellants claim that they are entitled to "stack" each $50,000 liability limit for each listed vehicle on the First Policy for a total liability coverage of $150,000. Because of language in the First Policy limiting to $100,000 the total amount of coverage available for any one accident, regardless of the number of vehicles insured, *Woods* is not controlling on the issue and Defendants-Appellants' argument is unavailing.

In *Lanning v. Allstate Ins. Co.*, 332 N.C. 309, 316-17, 420 S.E.2d 180, 185 (1992), our Supreme Court examined language almost identical to that in the present case. The policy language in *Lanning* expressly provided a "maximum limit of liability" of $50,000 "sustained by any one person in any one auto accident" and provided that "the limit of bodily injury liability shown in the Declarations for each accident," $50,000, "is our maximum limit of liability for all damages for bodily injury resulting from any one accident." *Id.* at 317, 420 S.E.2d at 185. The policy further stated, "This is the most we will pay for bodily injury… regardless of the number of: 1. Insureds; 2. Claims made; 3. Vehicles or premiums shown in the Declarations; or 4. Vehicles involved in the accident." *Id.* The *Lanning* court distinguished *Woods*, noting that "[u]nlike the Allstate policy here, the *Woods* policy failed to state explicitly that the 'per accident' limitation contained in the policy applied regardless of the number of vehicles listed in the policy." *Id.* Thus, the *Lanning* policy was not ambiguous and it "plainly and unambiguously precludes the aggregation of UM

coverages under its policy, plaintiffs' per accident UM coverage under that policy is limited to $50,000." *Id.* *Lanning* distinguished policies that could be interpreted in such a way to allow stacking with those that explicitly do not, noting that "[w]hen policies written before the 1991 amendments to the Act contain language that may be interpreted to allow stacking of UM coverages on more than one vehicle in a single policy, insureds are contractually entitled to stack." *Id.* at 316, 420 S.E.2d at 185. In contrast, policies that include a "per accident limitation" that applies, regardless of the number of vehicles listed in the Declarations, do not allow for aggregation. *Id.* at 318, 420 S.E.2d at 185.

Thus, *Lanning* compels the same conclusion here. The language in the First Policy specifically and explicitly limits the maximum liability to $50,000 per person and $100,000 per accident regardless of the number of insureds or vehicles listed in the Declarations. Accordingly, Defendants-Appellants were not entitled to "stack" or aggregate the liability limits based on the number of vehicles listed on the Declarations page. Therefore, summary judgment was appropriate with regard to Plaintiff-Appellee's obligations under the First Policy.

II. Whether Jarrett was a "Resident" of Charles's Household for Purposes of the Second and Third Policies

Next, Defendants-Appellants argue that they are entitled to liability coverage under the Second and Third Policies because Jarrett was a "family member" of Charles's. We disagree.

Resolution of this issue turns on whether there was any evidence that could support a finding that Jarrett was a "resident" of Charles's house. If there was, then Jarrett was an "insured" under the Second and Third Policies as a family member of Charles and Sheila and of Cassidy and Christian Price, and Defendants-Appellants would be entitled to liability coverage of $100,000 under each policy.

As discussed, a "family member" is defined as a person who is related to the "named insured" or the "named insured's" spouse by blood or marriage who is a resident of their household. "A minor may be a resident of more than one household for the purposes of insurance coverage." *N.C. Farm Bureau Mut. Ins. Co. v. Paschal*, __ N.C. App. __, __, 752 S.E.2d 775, 780 (2014). As this Court has noted,

> As observed by our courts, the words "resident," "residence" and "residing" have no precise, technical and fixed meaning applicable to all cases. "Residence" has many shades of meaning, from mere temporary presence to the most permanent abode. It is difficult to give an exact or even satisfactory definition of the term "resident," as the term is flexible, elastic, slippery and somewhat ambiguous. Definitions of "residence" include "a place of abode for more than a temporary period of time" and "a permanent and established home" and the definitions range between these two extremes. This being the case, our courts have held that such terms should be given the broadest construction and that all who may be included, by any reasonable construction of such terms, within the coverage of an insurance policy using such terms, should be given its protection.
>
> Our courts have also found . . . that in determining whether a person in a particular case is a resident of a particular household, the intent of that person is material to the

question.

Id.

Here, even viewing the evidence in a light most favorable to Defendants-Appellants and looking at the term "resident" in the broadest and most inclusive of terms, *see id.*, there was no evidence, besides a 2003 custody agreement which may still be "in effect" legally but which has not been followed since 2004, that Jarrett maintained any presence at his father's house. Elana testified at her deposition that Jarrett had spent, at the most, two nights at his father's house between 2003 and 2004. However, all overnight visits stopped after 2004 and that Jarrett never spent any significant time at his father's. Charles's and Sheila's affidavits submitted in support of the summary judgment motion were consistent with Elena's testimony. Charles averred that the joint custody arrangement was only practiced for approximately one month after it was entered on 21 December 2004 and that, after that, Jarrett "never lived or even spent one night at my house and he did not keep any clothes or personal belongings at my house." Jeremiah testified during his deposition that, although Jarrett sometimes worked at his father's farm during the summer, he did not recall Jarrett ever spending the night or keeping any belongings at Charles's house.

The facts of this case are distinguishable from those in *Davis v. Maryland Casualty Co.*, 76 N.C. App. 102, 106, 331 S.E.2d 744, 747 (1985), where this Court

concluded that "the minor plaintiff was as much a resident of her insured father's household as that of her mother." There, "the evidence disclose[d] that there existed between the father and the minor plaintiff a continuing and substantially integrated family relationship" based on the fact that

> [the minor] has frequently stayed overnight with her father, as many as two or three nights a week. Although a visitation schedule was provided for in the separation agreement, actual visitation has been more liberal. The minor plaintiff has frequently called her father to arrange additional visitation, and [the mother] has permitted the additional visitations whenever the child requested them. The father has made provision for keeping her clothes, personal property, and some of her furniture at his residence.

Id. at 104-106, 331 S.E.2d at 745-47.

In contrast, there was no evidence presented showing that Jarrett stayed with his father or that Charles made any provisions to keep his belongings at his house. Therefore, unlike *Davis*, Defendants-Appellants failed to present any evidence establishing any type of "integrated family relationship," *id*., or sufficient to raise a genuine issue of disputed fact in that regard, such that Jarrett could be considered a resident of Charles's house. Accordingly, summary judgment was appropriate as to this issue because, since Jarrett was not a resident of Charles's house, he was not a "family member" of Charles and Sheila nor Cassidy and Christian Price as defined by the policy such that Defendants-Appellants would be entitled to liability coverage under the Second and Third policies.

III. **Whether Jarrett was Covered Under the Fourth Policy**

Finally, Defendants-Appellants allege that they are entitled to liability coverage under the Fourth Policy because, as they contended above, Jarrett was a "family member" of Charles, the named insured. We disagree.

As with the first issue, resolution of this issue turns on the clear and unambiguous language of the Fourth Policy. Unlike the other policies, the Fourth Policy includes language specifically limiting what constitutes a "covered automobile" for purposes of liability coverage. The Declarations page of the Fourth policy has the symbol "07" entered next to "Item Two" of the policy. "Item Two" of the Declarations describes the automobiles that are "covered automobiles" under the policy. The symbol "07" specifically limits the "covered autos" only to those automobiles described in Item Three of the Declarations. The 1997 Ford Explorer was not listed under "Item Three." Therefore, the Fourth Policy does not provide any liability coverage for Jarrett's use of the 1997 Ford Explorer because the 1997 Ford Explorer was not a "covered automobile." Consequently, summary judgment was also appropriate with regard to Plaintiff-Appellee's obligations under the Fourth Policy.

Conclusion

Based on our review of the record and relevant caselaw, we affirm the trial court's order granting Plaintiff-Appellee's motion for summary judgment.

AFFIRMED.

Judges CALABRIA and STROUD concur.