COURT OF APPEALS
DECISION
DATED AND FILED

October 27, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-2559 **Cir. Ct. No. 02CV000031**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

NORTH CENTRAL CROP INSURANCE, INC., A KANSAS CORPORATION, AND FARMERS ALLIANCE MUTUAL INSURANCE COMPANY,

PLAINTIFFS-RESPONDENTS,

V.

DAN W. DUMKE, INDIVIDUALLY, AND D/B/A D & D PARTNERSHIP,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Green Lake County: WILLIAM M. McMONIGAL, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Dan W. Dumke appeals from a judgment in favor of North Central Crop Insurance, Inc. and Farmers Alliance Mutual Insurance Company (collectively, Farmers) for premiums for crop insurance. He argues that

summary judgment was improper because disputed issues of material fact exist as to whether the requested type of insurance was provided and whether North Central sold insurance without a proper license. We affirm the judgment.

¶2 Dumke, d/b/a D & D Partnership, farms more than 2,000 acres in Green Lake and Fond du Lac counties. He sought crop insurance for the 2000 season and contacted Don Kopp, a licensed independent insurance agent. Premiums, trigger yields, and level of coverage quotes generated by North Central were sent to Dumke for two types of coverage for land in each county—one where the loss is based on planted acreage and the other based on harvested acreage.[1] Over the telephone Dumke discussed with Kopp the premiums, trigger yields and maximum dollar per acre payback for harvested acreage coverage. When Kopp next met with Dumke, Dumke expressed a desire for planted acreage coverage. The application Dumke signed requested planted acreage coverage. However, because the application had been completed by Kopp prior to his meeting with Dumke and based on Dumke's initial discussion of the harvested acreage premium and payback, the application still referenced numbers for the maximum dollar per acre payback applicable to harvested acreage coverage.

¶3 Policies for planted acreage coverage were issued by Farmers Alliance and delivered to Dumke. After submitting his acreage reports, Dumke was billed for the policies. The premiums were higher than Dumke had anticipated. Dumke did not pay for the policies that were issued to him.

[1] Crop insurance losses are calculated by comparison of a "trigger yield" to the "county yield" established by the county or risk management agency.

¶4 Farmers commenced this action to collect the amount billed for planted acreage coverage of $14,891, plus interest. Dumke answered the complaint indicating that he had not been billed in accordance with what he believed to be the quoted premium (which was actually the quote for harvested acreage coverage). Farmers filed an amended complaint and, alleging mutual mistake with regard to the type of insurance requested, sought reformation of the policies to provide harvested acreage coverage at a cost of $11,769. A second amended complaint alleged that Dumke misunderstood that the quoted premiums for harvested acreage coverage were for planted acreage coverage and, as a result, the insurer was willing to charge Dumke $11,769 for the planted acreage policies. Dumke admitted to requesting planted acreage coverage but denied having made a mistake regarding the quoted cost and applicable maximum dollar per acre payback. Farmers moved for and was granted summary judgment. Dumke's motion for reconsideration was denied.

¶5 We review the circuit court's grant of summary judgment using the same methodology as the circuit court. ***City of Beaver Dam v. Cromheecke***, 222 Wis. 2d 608, 613, 587 N.W.2d 923 (Ct. App. 1998). There is no need to repeat the well-known methodology; the controlling principle is that when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. ***Id.***; WIS. STAT. § 802.08(2) (2001-02).[2]

[2] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶6 Dumke argues that a disputed issue of fact exists which precludes summary judgment. He characterizes the factual dispute as uncertainty as to the specific type of coverage provided and the value of that coverage. The record does not reflect a disputed issue of material fact. Dumke admitted in his answer and his deposition testimony that he wanted planted acreage coverage. The policies issued were for planted acreage coverage. Dumke was billed for planted acreage coverage. Dumke's inference that the billed amount was for something other than the requested coverage is unreasonable. *See* ***Belich v. Szymaszek***, 224 Wis. 2d 419, 425, 592 N.W.2d 254 (Ct. App. 1999) (the competing inferences must be "reasonable," that is "a logical, factual conclusion drawn from basic facts or historical evidence"). The record demonstrates that Dumke received the requested insurance but did not pay for it.

¶7 The only potential factual dispute is whether the cost of the policy was misrepresented or whether Dumke mistakenly believed the premium and maximum dollar per acre payback quoted for harvested acreage coverage were applicable to planted acreage coverage. That question does not preclude summary judgment because it is not material to the determination that Dumke is required to pay for the coverage provided. Indeed, that question is mooted by Farmers' demand only for the premium Dumke thought he would be billed. We recognize that Farmers is willing to collect the lower premium only because no loss payment would be due under either type of coverage. That no loss payment was due does not negate Dumke's obligation to pay for insurance coverage requested and provided.

¶8 Dumke argues that the policies are void because they were sold by North Central, an entity that is not licensed to sell insurance in Wisconsin. *See* WIS. STAT. § 618.44 (a policy sold in violation of WIS. STAT. ch. 618 is

unenforceable by, but enforceable against, the insurer). This claim is a nonstarter. The record demonstrates that North Central is licensed by the State of Wisconsin as a Resident Insurance Intermediary Firm. North Central is wholly owned by Farmers Alliance, the issuing insurer, and is authorized by Farmers Alliance to determine and bill premiums, collect premiums, and adjust claims for policies issued by Farmers Alliance. *See* WIS. STAT. § 628.02(4g) (an intermediary, as a managing general agent, manages all or a portion of the insurance business of an insurer). These facts are undisputed. There is no reasonable inference that North Central exceeded the scope of its licensing or that the policy was issued in violation of ch. 618.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.