STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0867

Illinois Farmers Insurance Company,
Respondent,

vs.

Donald Tischer, et al.,
Defendants,

Helen Feda, et al.,
Appellants.

Filed May 6, 2008
Affirmed
Shumaker, Judge

Douglas County District Court
File No. 21-C8-04-001137

Timothy P. Tobin, Lynn M. Schmidt Walters, Gislason & Hunter, L.L.P., 701 Xenia Avenue South, Suite 500, Minneapolis, MN 55416 (for respondent)

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Considered and decided by Shumaker, Presiding Judge; Willis, Judge; and Poritsky, 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

SHUMAKER, Judge

Appellants challenge the district court's summary judgment in favor of respondent insurance company on the basis that the motor-vehicle exclusion in insured's homeowners insurance policy precludes appellants' recovery of insurance proceeds on their personal-injury claim arising out of a motor-vehicle accident. We affirm.

FACTS

We are asked to determine whether the district court erred in ruling that a homeowners insurance policy excluded coverage for damages arising from an automobile accident.

Appellant Helen Feda was driving Donald Tischer's Ford Explorer automobile on Interstate 80 in Nebraska when it was involved in a single-vehicle rollover accident. Tischer, his wife Laurie, his daughter Jamie, and Jamie's friend were passengers. Jamie was ejected from the car and was killed. The others were injured.

The Tischers sued Helen Feda, alleging that she was negligent in the occurrence. The facts show that, prior to the rollover, the car had drifted onto the grassy median. Helen Feda and her husband asserted a counterclaim in which they contended that Donald Tischer was negligent when he grabbed the steering wheel to try to bring the car back onto the freeway. Claims were also made against the manufacturer of the Explorer and of the vehicle's tires. The Tischers and the Fedas entered a *Miller-Shugart* settlement in which Donald Tischer stipulated that a judgment of $300,000 could be

entered against him and that the Fedas would seek to satisfy the judgment from Tischer's homeowners insurance. All the other claims were resolved as well.

At the time of the accident, Donald Tischer was insured by respondent Illinois Farmers Insurance Company under a "Protector Plus Homeowners Package Policy." In accordance with the *Miller-Shugart* settlement, the Fedas sought proceeds under that policy for damages sustained in the vehicle accident. Relying on a policy exclusion, Illinois Farmers brought this declaratory-judgment action to determine the applicability of the exclusion. The district court granted summary judgment to the insurer, and this appeal followed.

D E C I S I O N

When reviewing an appeal from summary judgment, this court determines whether any genuine issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

In its complaint for declaratory relief, Illinois Farmers alleged that, at the time of the accident, the Tischer homeowners policy was in effect and that the policy "does not cover 'bodily injury' or 'property damage' claims '[a]rising out of ownership, maintenance, use, loading or unloading of . . . a motor vehicle owned or operated by or rented or loaned to an insured.'"

When Illinois Farmers moved for summary judgment, it discovered that it had quoted incorrect policy language in its complaint and in its memorandum in support of summary judgment. Ruling that there were genuine issues of material fact for trial, the district court denied the motion.

About two years later, the court permitted Illinois Farmers to renew its summary-judgment motion. In that motion, the insurer acknowledged that it had previously quoted incorrect policy language, offered a "true and correct" copy of the applicable policy—which contained exclusionary language different from that originally alleged—and submitted affidavits from insurance company employees attesting that the fourth edition of the homeowners policy was in effect at the time of the accident.

In opposition to the motion, the Fedas contended that there existed a genuine fact issue as to which policy was in effect when the accident happened. But the Fedas were unable to produce any policy different from the fourth edition to support their contention. General assertions are insufficient to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). To defeat a summary-judgment motion on the ground that there exists a fact issue for trial, the nonmoving party must point to sufficient evidence on an essential element in the case that would "permit reasonable persons to draw different conclusions." *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006).

The district court found that the Fedas had more than two years to conduct discovery and that they failed to produce any evidence that the fourth edition of the homeowners policy was not the policy in effect at the time of the accident. The court

further found that the fourth edition of the policy provides that it does "not cover bodily injury or property damage which: . . . 7. results from the ownership, maintenance, use, loading or unloading of: . . . b. motor vehicles." The court then held that this exclusion applies to the Fedas' injury claims and granted summary judgment to Illinois Farmers accordingly.

The Fedas argue on appeal that (1) the district court erred by selecting one policy of several as the policy of coverage; (2) even the policy the court selected does not exclude coverage; (3) the injuries to Helen Feda resulted from a "non-motoring risk"; and (4) public policy requires coverage.

I.

As to the first argument, the record does not support the Fedas' contention. Illinois Farmers argues that it submitted various specimen policies to show the typicality of the exclusion language but that the fourth edition of the homeowners policy is the one applicable here. The insurer supports its argument with the affidavit of an Illinois Farmers claim representative who states on personal knowledge and on review of records kept in the ordinary course of the insurer's business that the fourth edition is the policy that applies. It is this policy that contains the exclusion on which the court granted summary judgment. The Fedas have offered nothing but speculation to suggest that any other policy with any different language applied to the accident. The court did not arbitrarily or erroneously select the fourth edition over several other possibly applicable insurance policies.

II.

The Fedas next argue that the district court erred as a matter of law in concluding that the policy's unambiguous language excludes coverage of their personal-injury claim. "The interpretation of an insurance policy, including the question of whether a legal duty to defend or indemnify arises, is one of law which this court reviews de novo." *Auto-Owners Ins. Co. v. Todd*, 547 N.W.2d 696, 698 (Minn. 1996). Courts interpret policy exclusions narrowly against the insurer, which "has the burden of proving that a policy exclusion applies." *State Farm Ins. Cos. v. Seefeld*, 481 N.W.2d 62, 64 (Minn. 1992). Because general contract interpretation principles apply to insurance policies, clear and unambiguous language "must be given its usual and accepted meaning." *Ill. Farmers Ins. Co. v. Duffy*, 618 N.W.2d 613, 615 (Minn. App. 2000) (quoting *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 249 (Minn. 1998)), *review denied* (Minn. Jan. 26, 2001). This court will not "read an ambiguity into the plain language of an insurance contract in order to construe it against the insurer." *Henning Nelson Constr. Co. v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 652 (Minn. 1986).

As the district court did, we conclude that the facts of this case are governed by *West Bend Mut. Ins. Co. v. Milwaukee Mut. Ins. Co.*, 384 N.W.2d 877 (Minn. 1986). In *West Bend*, a passenger had grabbed the steering wheel of a moving vehicle, which caused it to roll over off a gravel road. *Id*. at 878. The supreme court was asked to determine whether the motor-vehicle exclusion in the passenger's homeowners insurance policy applied to preclude coverage of the driver's personal-injury claim. *Id*. Under the policy, bodily injury claims were excluded if "arising out of the . . . use of . . . any land

motor vehicle . . . operated by . . . an insured person." *Id.* The supreme court concluded that "when [the passenger] grabbed the steering wheel, she obviously was *using* the automobile"[1] within the meaning of the exclusion. *Id.*

The Fedas contend that *West Bend* is inapposite because the policy there contains the phrase "arising out of," whereas the policy at issue here excludes a bodily injury claim that "results from the . . . use of . . . motor vehicles." They argue that "arising out of" is less restrictive then the ambiguous phrase "results from."

The phrase "results from" is neither ambiguous nor demonstrably distinguishable from the phrase "arising out of." The accepted meaning of "arising" is "[t]o result, issue, or proceed." *The American Heritage Dictionary* 99 (3d ed. 1992). The accepted meaning of "result" is "[t]o come about as a consequence." *Id.* at 1539. Thus, the motor-vehicle exclusion in this case can be read unambiguously to preclude coverage for bodily injury that comes about as a consequence of the use of a motor vehicle. The language is clear, and "court[s] ha[ve] no right to read an ambiguity into the plain language of an insurance policy." *Seefeld*, 481 N.W.2d at 64.

[1] The Fedas argue that the interpretation of "use" in *West Bend* is dictum. We disagree. *West Bend* held that "the resulting injury to the driver 'arises out of the [passenger's] use of' the car," but that "the vehicle was [not] then being 'operated by' the passenger." 384 N.W.2d at 880. Although the court determined that the principal issue was whether the passenger "operated" the vehicle when she grabbed the steering wheel, *id.* at 879, it could not have reached that analysis without first resolving the issue of whether the passenger used the vehicle.

Furthermore, this court has previously addressed and dismissed a similar argument in *Mork Clinic v. Fireman's Fund Ins. Co.*, 575 N.W.2d 598 (Minn. App. 1998). *Mork* rejected the insurance company's argument that an exclusion for injuries "arising out of" certain services is broader than an exclusion for injuries "resulting from" such services. *Id*. at 602. This court recognized that both phrases share "the same ordinary and plain meaning" and that courts have treated exclusionary provisions containing either phrase "in the same fashion." *Id.* On this analysis, we conclude the Fedas' argument fails.

We turn back to *West Bend* and its conclusion that the passenger used the automobile when she grabbed the steering wheel. 384 N.W.2d at 878. The supreme court reasoned that the policy language "arising out of the use of" had been broadly interpreted to "require some causal connection between the injury and the use of the vehicle for transportation purposes," or to require "that the vehicle be an active accessory to the injury." *Id*. at 878-79 (quotation and citations omitted). "If West Bend's automobile exclusion were limited to the 'arising out of the use of' language, there seems little doubt that [the driver's] injuries would 'arise out of the use of' a vehicle by his passenger." *Id*. at 879.

The limited clause envisioned by *West Bend* mirrors the exclusionary provision at issue in this case. Illinois Farmers' motor-vehicle exclusion precludes coverage of bodily injury claims resulting from the use of a motor vehicle. Applying the analysis in *West Bend* to these facts, Tischer was using the Explorer when he grabbed the steering wheel while the vehicle was moving, and the Fedas' claimed injuries arose out of or resulted from that use. The district court's conclusion was not error, and we decline to "redraft

insurance policies to provide coverage where the plain language of the policy indicates that no coverage exists." *Lott v. State Farm Fire & Cas. Co.*, 541 N.W.2d 304, 307 (Minn. 1995) (quotation omitted).

III.

We further reject the Fedas' argument that Helen Feda's injuries resulted from Tischer's "negligent intrusion into the driver's duties," an act they characterize as a "non-motoring risk" that triggers coverage under *Waseca Mut. Ins. Co. v. Noska*, 331 N.W.2d 917, 923 (Minn. 1983).

Noska held that a claim for injuries resulting from the use of a motor vehicle may be covered by both the insured's automobile-liability policy and his homeowners insurance policy, despite the existence of a motor-vehicle exclusion, "where two independent acts, one vehicle-related and one nonvehicle-related," caused the injuries. *Id.* at 921. But the supreme court in *Seefeld* limited application of *Noska* to situations in which the two causes "*arose* independently of each other" and "*could have* operated independent of a motor vehicle to cause the loss." 481 N.W.2d at 65. Under the *Seefeld* rule, "if both causes are vehicle-related, the motor-vehicle exclusion [in a homeowners insurance policy] precludes coverage." *Midwest Family Mut. Ins. Co. v. Schmitt*, 651 N.W.2d 843, 847 (Minn. App. 2002). Coverage is also precluded "if there is only a 'remote possibility' that injury could have occurred from the concurrent cause without a motor vehicle." *Duffy*, 618 N.W.2d at 616 (citing *Seefeld*, 481 N.W.2d at 65).

Tischer grabbed the steering wheel while the vehicle was traveling in the median. His action caused the vehicle to veer across the interstate and flip over, resulting in

injuries and death. While the Fedas argue that "a non-motoring wheel grab, and a motoring of forward progress of the vehicle under the control of another d[r]iver" are two independent causes, they wholly concede their argument by stating that "[b]oth aspects of the conduct would have to concur [sic] . . . in order to produce the loss that results." We conclude that Tischer's action is inextricably linked to the vehicle and could not have operated independently to cause Helen Feda's injuries. *See Seefeld*, 481 N.W.2d at 65 (concluding that "[a]ny injury caused by the trailer's negligent design and construction could have occurred only through the use of a motor vehicle"); *Schmitt*, 651 N.W.2d at 849 (concluding that "the negligent inspection of the chain [used to lift a vehicle off the ground] was a factor in the cause of the accident . . . [that] operated inextricably with the use of the motorized crane to cause [appellant's] injury"); *Duffy*, 618 N.W.2d at 616 (concluding that "the act of furnishing alcohol to a minor, who subsequently drives a motor vehicle" and hits a tree, killing himself and injuring a passenger, is "directly linked to the motor vehicle").

IV.

The Fedas also argue that public policy requires that Illinois Farmers provide coverage for its insured's personal liability. "Generally, a homeowner's liability policy does not include use of an automobile." *Fillmore v. Iowa Nat'l Mut. Ins. Co.*, 344 N.W.2d 875, 878 (Minn. App. 1984) (citing Appleman, *Insurance Law & Practice* § 4500.04 (1979)). "This is consistent with the public policy of having separate policies for automobile and homeowner's liability." *Id*. The Fedas provide no relevant support

for their argument that denying them coverage in this case "makes passenger interference negligence uninsurable as a practical matter."

Affirmed.