STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2035

St. Luke's Hospital of Duluth,
Appellant,

vs.

Minnesota Joint Underwriting Association,
Respondent.

Filed July 13, 2010
Affirmed
Wright, Judge

St. Louis County District Court
File No. 69DU-CV-08-4640

Timothy W. Feeley, Hall, Render, Killian, Heath & Lyman, Milwaukee, Wisconsin (for appellant)

John M. Bjorkman, Patrick J. Boley, Larson King, St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Minge, Judge; and Harten, Judge.*

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

WRIGHT, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent, arguing that the district court erred by concluding that (1) appellant is not

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

entitled to separate coverage limits under the plain language of the insurance policy and (2) St. Luke's was not entitled to purchase an extended-reporting endorsement. We affirm.

FACTS

In December 2005, the Minnesota Joint Underwriting Association (MJUA) issued a professional-liability insurance policy to Stefan Konasiewicz, M.D. The policy included limits of liability of $1,000,000 per occurrence and $3,000,000 in the aggregate. Upon Dr. Konasiewicz's request, MJUA added St. Luke's Hospital of Duluth, Inc. (St. Luke's) as an additional insured pursuant to an endorsement to Dr. Konasiewicz's policy. St. Luke's was not added to the policy's declarations page. The policy was renewed for 2007 and 2008 without any changes to the policy or the endorsement.

In February 2008, Lorena and Charles LeBeau sued Dr. Konasiewicz and St. Luke's. In addition to their negligence claim against Dr. Konasiewicz and their vicarious-liability claim against St. Luke's, the LeBeaus claimed that St. Luke's committed separate negligent acts in its hiring and supervision of Dr. Konasiewicz. The parties settled, and MJUA paid the policy's per-occurrence liability limit of $1,000,000. St. Luke's paid an additional sum and reserved the right to dispute MJUA's denial of coverage beyond the $1,000,000 liability limit.

In an August 2008 letter, St. Luke's and Dr. Konasiewicz notified MJUA that they were cancelling the policy and sought to exercise their right to purchase an extended-reporting endorsement. MJUA granted Dr. Konasiewicz's request but denied St. Luke's request.

St. Luke's sued MJUA, asserting that it is entitled to a $1,000,000 limit of liability separate from Dr. Konasiewicz's limit and that it is entitled to purchase an extended-reporting endorsement. Both parties moved for summary judgment. After a hearing, the district court granted summary judgment in favor of MJUA. This appeal followed.

D E C I S I O N

When reviewing a district court's decision to grant summary judgment, we consider whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). In doing so, we view the evidence in the light most favorable to the nonmoving party and resolve any doubts on the existence of material fact issues against the moving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Here, the facts are not in dispute. Thus, our review is limited to the district court's application of the law to undisputed facts.

The construction of an insurance contract as applied to the undisputed facts presents a question of law, which we review de novo. *Jenoff, Inc. v. N.H. Ins. Co.*, 558 N.W.2d 260, 262 (Minn. 1997). We apply general principles of contract construction when we interpret an insurance policy. *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 249 (Minn. 1998). In doing so, we give the unambiguous terms used in an insurance policy "their plain, ordinary, and popular meaning, so as to effect the intent of the parties." *Ostendorf v. Arrow Ins. Co.*, 288 Minn. 491, 495, 182 N.W.2d 190, 192 (1970). An ambiguity exists when a word or phrase in an insurance policy is reasonably subject to more than one interpretation. *Reinsurance Ass'n of Minn. v. Hanks*, 539

N.W.2d 793, 796 (Minn. 1995). We will not redraft an insurance policy to provide coverage when the plain, unambiguous language of the policy establishes that coverage does not exist. *Ostendorf*, 288 Minn. at 495, 182 N.W.2d at 192. If we conclude that the language of the policy is ambiguous, however, we resolve the ambiguity in favor of the insured. *Columbia Heights Motors, Inc. v. Allstate Ins. Co.*, 275 N.W.2d 32, 36 (Minn. 1979).

I.

St. Luke's argues that the additional-insured endorsement is ambiguous because it is susceptible to more than one meaning. The "**Limits of Liability**" provision states that the $1,000,000-per-occurrence limit applies "separately to each person named in the Declarations." Although St. Luke's is not named on the declarations page, it argues that the policy can be reasonably interpreted to mean that St. Luke's is entitled to its own separate limits of liability because it was added to the "**Who Is Insured**" provision of the policy.

The parties do not dispute that the policy provides certain protections to St. Luke's. St. Luke's was added as an additional insured to Dr. Konasiewicz's professional-liability policy through an additional-insured endorsement. The additional-insured endorsement states, in relevant part: "WHO IS INSURED is amended to include as an insured the person(s) or organization(s) shown in the SCHEDULE above as an insured but only with respect to liability arising out of your operations or premises owned by or rented by you." The "**Who Is Insured**" provision states: "Each individual person named in the Declarations as an **Insured**, and any employee or other person acting under the

direction, control, or supervision of any person named in the Declarations is **Insured** under this policy." (Emphasis in original.) The plain language of the endorsement, therefore, adds St. Luke's to the "**Who Is Insured**" provision's existing categories of those insured by the policy, which results in three categories of insureds: (1) those listed on the declarations page; (2) those acting under the direction, supervision, or control of someone listed on the declarations page; and (3) St. Luke's.

The plain language of the endorsement establishes St. Luke's status as one who is insured under the policy. But that status is not equivalent to one who is named on the declarations page. Indeed, the endorsement here expressly limits St. Luke's coverage to liability arising from Dr. Konasiewicz's operations or premises owned or rented by Dr. Konasiewicz, which is typical of an additional-insured endorsement. *See* 3 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* § 40:25 (3d ed. 2005) ("[C]overage for an additional insured is typically limited to liability arising out of the named insured's work or operations. . . . For this reason, often no additional premium is required for adding someone as an additional insured on a policy."). St. Luke's status under the policy, therefore, does not entitle it to its own liability limits.

The "**Limits of Liability**" provision unambiguously states that the $1,000,000-per-occurrence limit applies "separately *to each person named in the Declarations*." (Emphasis in original and emphasis added.) The plain meaning of this phrase is that only one who is named on the declarations page is entitled to a separate limit of liability. St. Luke's is not named on the declarations page. Only Dr. Konasiewicz is so named. There is no language in the additional-insured endorsement, the "**Who Is Insured**" provision or

elsewhere in the policy that expressly adds St. Luke's to the declarations page. According to the provision's plain and ordinary language, St. Luke's is not entitled to its own limits of liability that are distinct from those of Dr. Konasiewicz. Because St. Luke's is not named on the declarations page, the district court did not err by concluding that St. Luke's is not entitled to separate limits of liability.

II.

St. Luke's next argues that it is entitled to purchase its own extended-reporting endorsement. The "**Optional Reporting Endorsement**" provision states: "If this policy is canceled by the **Insured**[,] . . . the **Insured** shall have the right to purchase, for an additional premium, an extended reporting endorsement." (Emphasis in original.) The extended-reporting endorsement extends the amount of time in which to report a covered claim that arose during the policy period. *See* Jane Massey Draper, Annotation, *Construction and Application of Insurance Extended Reporting Endorsements*, 9 A.L.R. 6th 467, 477-78 (2005). But it does not change the nature of the coverage provided. *See* 20 Eric Mills Holmes, *Holmes' Appleman on Insurance 2d, Law of Liability Insurance* § 130.4, at 288 (2002) (stating that "extended reporting period coverage does not increase the scope of the coverage under the policy").

St. Luke's asserts that the "**Optional Reporting Endorsement**" provision gives St. Luke's the right to purchase an extended-reporting endorsement. But St. Luke's interpretation, if adopted, produces an absurd result because it would grant St. Luke's the right to purchase an insurance product that is either unnecessary or without value.

According to the facts presented, MJUA granted Dr. Konasiewicz's request to purchase an extended-reporting endorsement. If Dr. Konasiewicz purchased the extended-reporting endorsement, a separate extended-reporting endorsement for St. Luke's is unnecessary. The additional-insured endorsement provides that St. Luke's is insured "but only with respect to liability arising out of your operations or premises owned by or rented by you." In this context, "your" and "you" refer to the one named on the declarations page. *See* Russ & Segalla, *supra*, § 40:26 ("you" and "yours" typically refer to named insured); 1 Leo Martinez et al., *New Appleman Insurance Law Practice Guide* § 4.05[3][a], [b] (2009) (stating that named insured generally is designated on declarations page and is limited to the one(s) named; term "insured" applies to anyone qualified as an insured under the policy). Therefore, under the terms of the policy, St. Luke's coverage is dependent on the coverage provided to the one named on the declarations page, namely, Dr. Konasiewicz. As a consequence of the link between St. Luke's coverage and Dr. Konasiewicz's coverage, if Dr. Konasiewicz purchases the extended-reporting endorsement, St. Luke's also is entitled to the extended-reporting period as an additional insured to Dr. Konasiewicz's policy. *See Nat'l Auto. & Cas. Ins. Co. v. Cal. Cas. Ins. Co.*, 139 Cal. App. 3d 336, 341 (Cal. Ct. App. 1983) (stating that the named insured's coverage rights inure to any additional insureds); 45 C.J.S. *Insurance* § 597 (2007) (same). As such, a separate right to purchase the extended-reporting endorsement is unnecessary.

If Dr. Konasiewicz chose not to purchase the extended-reporting endorsement, however, a separate right to purchase the extended-reporting endorsement would have no

value to St. Luke's. Under this circumstance, Dr. Konasiewicz would have no coverage for claims that were not reported before the policy term expired. And as a consequence of the link between St. Luke's coverage and Dr. Konasiewicz's coverage, St. Luke's also would cease to be covered, even if St. Luke's were allowed to purchase the extended-reporting endorsement. *See* 45 C.J.S. *Insurance* § 597 (stating that an additional insured's rights are derivative of the rights of named insured). Under these circumstances, therefore, St. Luke's interpretation of the "**Optional Reporting Endorsement**" provision would give St. Luke's the right to purchase something that has no value.

We construe a contract with the objective to avoid an absurd result. *See Employers Mut. Liab. Ins. Co. of Wis. v. Eagles Lodge of Hallock, Minn.*, 282 Minn. 477, 479-80, 165 N.W.2d 554, 556 (1969) (holding that contract terms must be read in context of entire contract, and constructions that would lead to an absurd result or render provisions meaningless should be avoided). Because St. Luke's construction of the contract here would result in St. Luke's having the right to purchase something that is either unnecessary or without any value, we conclude that St. Luke's is not entitled to purchase an extended-reporting endorsement under the "**Optional Reporting Endorsement**" provision of the policy.

III.

St. Luke's also argues that it should be entitled to limits of liability independent of Dr. Konasiewicz's limits of liability and to purchase its own extended-reporting endorsement based on the reasonable-expectations doctrine. "The reasonable

expectations doctrine may in certain limited situations protect the reasonable expectations of the insured with respect to coverage where the literal terms and conditions of the policy bar the claim." *W. Bend Mut. Ins. Co. v. Allstate Ins. Co.*, 776 N.W.2d 693, 701 (Minn. 2009) (citing *Atwater Creamery Co. v. W. Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 277-78 (Minn. 1985)). The Minnesota Supreme Court has limited the use of this doctrine for resolving ambiguity in policy terms and "for correcting extreme situations" such as where the coverage "is significantly different from what the party reasonably believes it has paid for and where the only notice the party has of that difference is an obscure and unexpected provision." *Id.* (quotation omitted). "The doctrine should not be applied where a prominent policy term excludes coverage and the evidence does not indicate the insured was misled." *Reinsurance Ass'n of Minn. v. Johannessen*, 516 N.W.2d 562, 566 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). Ambiguity is a factor in determining the reasonable expectations of the insured. *Atwater Creamery*, 366 N.W.2d at 278. Other factors include "whether the insured was told of important, but obscure, conditions or exclusions and whether the particular provision in the contract at issue is an item known by the public generally." *Id.* The doctrine does not relieve the insured of the responsibility to read the policy. *Id.*

St. Luke's first contends that the placement of the endorsement is ambiguous, arguing that the "**Who Is Insured**" provision should be deemed hidden. But the policy here is only seven pages, with four additional pages that include the additional-insured endorsement. The "**Who Is Insured**" provision is in the center of page three of the policy and is typed in the same font size as the rest of the document. The heading "**Who**

Is Insured" is in bold. This is not a lengthy document, nor is the "**Who Is Insured**" provision difficult to find or read. Consequently, we do not deem the provision to be obscure or hidden.

St. Luke's also maintains that the general public is unaware of the effect of an additional-insured endorsement. But unlike the public generally, St. Luke's encounters the effect of this type of endorsement in its business operations professional-liability insurance policies. This factor, therefore, does not weigh in favor of St. Luke's.

The circumstances here do not represent the kind of "extreme situations" contemplated for application of the reasonable-expectations doctrine. *See W. Bend Mut. Ins.*, 776 N.W.2d at 701. St. Luke's argument that it is entitled to separate liability limits and to purchase an extended-reporting endorsement based on the reasonable-expectations doctrine, therefore, fails.

Affirmed.