

IN THE COURT OF APPEALS OF IOWA

No. 9-477 / 89-245

FILED

DEC 21 1989

CLERK SUPREME COURT

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

vs.

JOHN LAMBERTS,

Defendant,

and

HARALD LAMBERTS,

Defendant-Appellant.

8

Appeal from the Iowa District Court for Polk County,
Rodney J. Ryan, Judge.

Appeal from a declaratory judgment determining a
homeowner's policy did not provide coverage under an "other
premises" exclusion. **AFFIRMED.**

James A. Pugh of Morain, Burlingame, Pugh, Juhl &
Peyton, West Des Moines, for the appellant.

Roy M. Irish of Patterson, Lorentzen, Duffield,
Timmons, Irish, Becker & Ordway, Des Moines, for the
appellee.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

The issue in this declaratory judgment action⁹ is whether a homeowner's policy issued by plaintiff-appellee American Family Mutual Insurance Company afforded their insured, defendant John Lamberts, liability coverage for a claim that occurred while John was engaged in activities on land he owned that was not insured under the policy. We agree with the trial court that the coverage was excluded under an "other premises" exclusion of the policy. We affirm.

Defendant John Lamberts owned a home in Urbandale insured under a homeowner's liability policy issued by plaintiff. John also owned an undivided one-third interest in a farm near Granger. The farm was not listed as an insured premises under John's homeowner's policy.

The other undivided two-thirds interest in the farm was owned by John's father, defendant-appellant Harald Lamberts. Harald raised Christmas trees on a portion of the land. John took debris from his Urbandale residence and burned it on the Granger property. Through John's alleged negligence, the fire spread and burned Harald's Christmas trees. Harald sued John to recover for his lost Christmas trees.

American Family filed this declaratory judgment action against John and Harald seeking a determination that they need not afford John coverage for Harald's claim. American

Family contends coverage on Harald's claim is excluded because the claim resulted from John's use of uninsured premises. Defendants contended the claim arose from John's actions, which were insured, rather than from John's use of the premises. Appellant now contends the trial court improperly construed the facts in this situation to come under the "other premises" exclusion in his homeowner's insurance policy.

This action was filed and tried as an action in equity. We treat it as an equity action on appeal. Life Investors Ins. Co. of Am. v. Heline, 285 N.W.2d 31, 35 (Iowa 1979). Our review is de novo. Iowa R. App. P. 4.

An insurance policy is a contract of adhesion and its provision will be construed in a light most favorable to the insured. State Farm Auto. Ins. Co. v. Malcolm, 259 N.W.2d 833, 835 (Iowa 1977). A contract of insurance should be interpreted from the standpoint of an ordinary man's viewpoint, not a specialist or expert. Qualls v. Farm Bureau Mut. Ins. Co., 184 N.W.2d 710, 712 (Iowa 1971). Any ambiguity must be construed most strongly against the company that drew the policy. Id. at 713.

The "other premises" exclusion states that coverage does not apply to bodily injury or property damage "arising out of the ownership of or rental to any insured of any premises, other than an insured premise." John owned the property on which he started the fire. He obviously was

using the property as a place to burn because he owned the property. This claim clearly comes within the policy exclusion. We affirm the trial court.

AFFIRMED.

Hayden, J., concurs; Schlegel, P.J., dissents.

I respectfully dissent.

If Mr. Lamberts hunts on his neighbor's property and, through his negligent firing of his gun, injures someone or kills livestock, his homeowner's policy covers his negligence. If, on the other hand, he has no problem until he crosses the fence or property line onto the land in which he has a small ownership interest--one percent--the same type of accidental shooting leaves him without any coverage. Yet, he is no more upon his own property because he owns it than he was in this case.

Liability policies are not insurance of properties; they are issued to protect the insured against the consequences of his negligence, regardless of where he is. If, as a result of some commercial use of his land, an accident occurs, the policy exclusion would negate coverage. Injury just because he is on land in which he owns an interest was not intended in the exclusion. In any event, the provision is ambiguous and should be interpreted against the company.

I would reverse.