FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GRINNELL MUTUAL REINSURANCE COMPANY,	)	101
Plaintiff-Appellee,	)	Filed August 27, 1986
vs.	)	6-167 85-1516
RONALD HALVORSON and TRIPLE H., LTD.,	)	
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Mitchell County (No. 12421) - Ralph F. McCartney, Judge.

Defendants appeal from a declaratory judgment for plaintiff insurer determining there was no coverage under two policies issued by insurer. **AFFIRMED.**

Scott D. Brown, of Brown, Kinsey, & Funkhouser, Mason City, for defendants-appellants.

James E. O'Donohoe, of O'Donohoe, O'Connor & O'Donohoe, New Hampton, for plaintiff-appellee.

Heard by Oxberger, C.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Defendants Ronald Halvorson and Triple H., Ltd. appeal from a judgment for Plaintiff Grinnell Mutual Reinsurance Co. in an action seeking a declaratory judgment of noncoverage under two insurance policies.

Triple H., Ltd. is a family farm corporation in which Ronald Halvorson is the majority shareholder. The other shares are owned by his wife and children. A pickup truck belonging to Triple H., Ltd. and driven by Lee Halvorson, the 18-year-old son of Ronald Halvorson, was in an accident resulting in substantial personal injuries. The injured person is not a party to this action. Defendants claim three liability insurance policies written with Grinnell Mutual cover the accident. We designate the policies A, B, and C.

Policy A was a $100,000 corporate vehicle liability policy covering the truck. The full amount of that policy has been tendered and is not a subject matter of this litigation.

Policy B is a family automobile policy issued to Ronald Halvorson for a different vehicle. The policy affords coverage to family members driving nonowned vehicles. It is conceded Lee is a family member and the truck was a nonowned vehicle under the terms of the policy. However, the trial court determined coverage was excluded under Exclusion 10 which provides that the policy does not apply to:

> (10) Bodily injury or property damage arising out of the ownership, maintenance or use of any vehicle, other than your insured car, which is owned by or furnished for regular use by you[1] or a relative. However, we will provide bodily injury and property damage coverage to you arising out of the maintenance or use of any car or utility trailer owned by a relative, provided there is no other bodily injury and property damage insurance coverage applying to the vehicle. In that case, the insurance coverage given you will be excess.

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[1] The policy definitions provide: "'**You**' and '**your**' mean the Policyholder named in the Declarations and spouse if living in the same household."

The trial court concluded the truck was furnished or available for Ronald Halvorson's regular use. The court further concludes "that the insured here did make more than occasional use of this truck and that Lee did not need permission but was granted generally a blanket authority to use it."

Policy C is a farm security policy issued to Triple H., Ltd. by Grinnell Mutual.

I.

Defendants' contend the trial court erred in finding Lee did not need permission to use the truck and the truck was furnished or available for his regular use. Defendants contend because the truck was owned by Triple H., Ltd. the narrow issue is whether the truck was furnished or available for regular use by Lee. Grinnell Mutual basically argues the truck was furnished or available for regular use by both Ronald and/or Lee.

Except in determining the legal consequences of the policy, we do not review the case de novo, but only on errors assigned. Bringle v. Economy Fire and Casualty Co., 169 N.W.2d 879, 883 (Iowa 1969); State Farm Mutual Auto Insurance Co. v. Townsend, 361 N.W.2d 332, 334 (Iowa App. 1984).

No hard and fast rule has been nor can be established for determining the question of what constitutes "furnishing for regular use," but each case must stand or fall on the particular facts before the court. State Farm, 361 N.W.2d at 335. This court rejected an insurer's argument that the fact the insured had access to the nonowned vehicle at all times was the sole controlling and determinative issue. Id. Instead, we held we must look at the record as a whole. Id.

In Bringle, the court interpreted a similar provision:

> . . . The general purpose and effect of this provision of the policy is to give coverage to the insured while

> engaged in the only infrequently or merely casual use of an automobile other than the one described in the policy, but not to cover him against personal liability with respect to his use of another automobile which he frequently uses or has the opportunity to do so. More specifically, the evident intention of the limitation with respect to other automobiles is to prevent a situation in which the members of one family or household may have two or more automobiles actually or potentially used interchangeably but with only one particular automobile insured.

Bringle, 169 N.W.2d at 882 (quoting Aler v. Travelers Indemnity Co., 92 F.Supp. 620, 623 (D.C. Md. 1950)).

The facts in the present case clearly support the trial court's findings that the truck was furnished or available for Ronald Halvorson's regular use and that Lee had access to the truck at all times. Triple H., Ltd. was incorporated in 1979, at which time the truck was titled in the corporate name. Ronald is president of Triple H., Ltd. Lee is a student and a part-time employee of the corporation. Another corporate employee used the truck every day while Lee used the truck on occasion. To facilitate availability, the keys were left in the truck ignition at all times.

At the time of the collision Lee was driving the truck to the local high school he attended. He planned to fix the muffler on the truck as part of a high school shop project. He had obtained Ronald's permission to take the truck.

We affirm the trial court's determination coverage was not afforded under Policy B, the Halvorson's family auto policy.

II.

Defendants next contend the trial court erred in finding coverage was excluded under Policy C, Triple H., Ltd.'s farm security policy. Policy C insures the corporation against liability occasioned in the use of corporation vehicles on the premises or the use of nonowned vehicles. The trial court determined

coverage was excluded under Exclusion B because the truck in question was owned by Triple H., Ltd. and because the accident in which the truck was involved occurred off the farm premises. Exclusion B1 of the coverage provisions of Policy C sets forth the following exclusions to Coverage A:

> B. Under coverages A. . . . . to the ownership, maintenance, operation, use, loading and unloading of
> 1. Automobiles while away from the premises, except under Coverage A with respect to automobiles not owned, rented or leased to an insured, but used in connection with operations by independent contractors for non-farming or non-business purposes of an insured, or operated by a farm employee of the insured in connection with operations incidental to the ownership, maintenance or use of the farm premises. (emphasis added).

The trial court determined Exclusion B1 applied to all vehicles owned by Triple H., Ltd. while being used away from the premises. However, defendants claim the trial court did not address the issue of whether Lee was a "farm employee" under Policy C. In addition, defendants claim the trial court did not address the issue of whether Lee's operation of the truck at the time of the collision was in connection with "operations incidental to ownership, maintenance or use of the farm premises." Defendants contend the phrase "not owned" rented or leased" relates only to automobiles "used in connection with operations by independent contractors" and not to automobiles "operated by a farm employee."

Grinnell Mutual, on the other hand, argues Exclusion B1 clearly excludes all motor vehicles owned by Triple H., Ltd. and used "while away from the premises."

In either case, defendants claim the exclusionary language in Policy C is fairly susceptible to two interpretations, therefore, it is ambiguous and should be construed in favor of the insured. We disagree.

We find the exclusion in Policy C clearly applies to all motor vehicles "while away from the premises." We also find the exception to such exclusion is for vehicles "not owned, rented or leased to the insured." (emphasis added).

Iowa R. App. P. 14(f)(14) provides in the construction of written contracts, the cardinal principle is that the intent of the parties must control, and except in cases of ambiguity, this is determined by what the contract itself says.

However, the rules for resolving ambiguous policies do not come into play unless it can fairly be said there is a real ambiguity in the terms of the policy. Stover v. State Farm Mutual Insurance Co., 189 N.W.2d 588, 591 (Iowa 1971). The mere fact parties disagree on the meaning of a phrase in an insurance policy does not establish ambiguity. Francis v. Farmers Casualty Co. (Mut.), 319 N.W.2d 273, 275 (Iowa 1982). Rather, the test is whether the language is fairly susceptible to two interpretations. Id. A strained or unreasonable construction of the language used where there is no real ambiguity should not be indulged in. Stover, 189 N.W.2d at 591. If there is no ambiguity there is no right or duty on the part of the court to write a new contract of insurance between the parties. State Farm Automobile Insurance Co. v. Malcolm, 259 N.W.2d 833, 835 (Iowa 1977).

We therefore affirm the trial court in its determination there was no coverage under Policy C, the farm liability policy.

AFFIRMED.