FILED
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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

No. 0-625 / 89-1984

MUTUAL FIRE & AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellant,

vs.

DAVID J. SORENSON, NANCY J. SORENSON, DAVID SCOTT SORENSON and DONALD WILLIAM STRUB,

Defendants-Appellees.

DAVID J. SORENSON, NANCY J. SORENSON and DAVID SCOTT SORENSON,

Cross-Petitioners,

DONALD WILLIAM STRUB,

Intervenor.

vs.

IBELING INSURANCE SERVICES,

Defendant to Cross-Petition.

Appeal from the Iowa District Court for Hardin County, Carl D. Baker, Judge.

Plaintiff appeals from a declaratory judgment affording insurance coverage. **AFFIRMED.**

Jack W. Rogers, West Des Moines, for appellant.

Paul A. Zoss, Burns H. Davison III, and Michael R. Nelson of Adams, Howe & Zoss, P.C., Des Moines, for appellee Donald William Strub.

Heard by Donielson, P.J., and Sackett, and Habhab, JJ.

PER CURIAM

This appeal follows the trial court's denial of plaintiff-appellant Mutual Fire & Automobile Insurance Company's petition for a declaratory judgment determining no coverage was in place on a 1969 Chevrolet pickup on November 18, 1986. The pickup was owned by defendant David S. Sorenson, son of defendant David J. Sorenson.

On September 15, 1986, the father, David J. Sorenson, had met with George Ibeling, an insurance agent. David Sorenson sought coverage for his wife and two sons on four automobiles owned by him and his wife. A binder of coverage issued September 15, 1986. One of the automobiles listed to be insured was a 1975 Bel Air. On November 8, 1986, the Bel Air was repossessed and the next day son David purchased the 1969 Chevrolet pickup involved nine days later in the accident. At the time of the accident, the Sorsensons had not yet obtained a policy of insurance.

Mutual denied coverage under an exclusion of the policy, which excluded coverage for the use of any vehicle other than a covered vehicle. Following trial, the district court entered judgment in favor of the Sorensons and declared that there was insurance coverage for the accident. The court applied the doctrine of reasonable expectations. The court found that Sorenson's purpose was to obtain coverage for each family member, regardless of what they were driving. The court found that Sorenson was

never informed of the exclusion and had not received a copy of the exclusion. The court concluded that the exclusion should be ignored because it defeated Sorenson's dominant purpose.

Plaintiff appeals contending the doctrine of reasonable expectations is not applicable because an ordinary person would not reasonably expect coverage for a vehicle owned and used by a family member which was not listed on the policy. Mutual also argues that there is no evidence to support a theory that the policy exclusion eliminated the dominant purpose of the transaction. It further claims that it should not be liable because the insured had not paid the premium. Finally, Mutual contends that the insurance contract is not valid because there was no mutuality of understanding by the parties.

Our review is for correction of errors at law. We are bound by findings of fact made by the trial court if they are supported by substantial evidence. Iowa R. App. P. 4.

As a part of its fact-findings the trial court found the evidence showed Sorenson's purpose was to obtain coverage for all four members of his family, irrespective of what car they drove. The court also found the matter was loosely handled by the agent, who did not show Sorenson the application and did not supply a copy of a policy or proposed policy until after the accident. There is substantial evidence to support these factual findings and they are binding on us.

Plaintiff contends it was error for the trial court to have found the coverage ordered had been reasonably expected. The doctrine of reasonable expectations has risen as a fundamental tool of insurance contract analysis. In C & J Fertilizer, Inc. v. Allied Mutual Insurance Co., 227 N.W.2d 169 (Iowa 1975), the court reviewed the case against what it called the backdrop of a "revolution" in the prevalence of standard form contracts and said:

> It is generally recognized the insured will not read the detailed, cross-referenced, standardized, mass-produced insurance form, nor understand it if he does. 7 Williston on Contracts § 906B, p. 300 ("But where the document thus delivered to him is a contract of insurance the majority rule is that the insured is not bound to know its contents")1; 3 Corbin on Contracts § 559, pp. 265-66 ("One who applies for an insurance policy . . . may not even read the policy, the number of its terms and the fineness of its print being such as to discourage him"); Note, Unconscionable Contracts: The Uniform Commercial Code, 45 Iowa L.Rev. 843, 844 (1960) ("It is probably a safe assertion that most involved standardized form contracts are never read by the party who 'adheres' to them. In such situations, the proponent of the form is free to dictate terms most advantageous to himself"); see Hully v. Aluminum Company of America, 143 F.Supp. 508, 513 (S.D. Iowa 1956), aff'd sub nom. Columbia Casualty Company v. Eichleay Corporation, 245 F.2d 1 (8th Cir. 1957); Collegiate Mfg. Co. v. McDowell's Agency, Inc., 200 N.W.2d 854, 859 (Iowa 1972); Quinn v. Mutual Benefit Health & Acc. Ass'n of Omaha, 244 Iowa 6, 14, 55 N.W.2d 546, 550 (1952); Lankhorst v. Union Fire Ins. Co., 236 Iowa 838, 844, 20 N.W.2d 14, 17 (1945).
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> The concept that persons must obey public laws enacted by their own representatives does not offend a fundamental sense of justice; an inherent element of assent pervades the process.
>
> But the inevitable result of enforcing all provisions of the adhesion contract, frequently,

> as here, delivered subsequent to the transaction and containing provisions never assented to, would be an abdication of judicial responsibility in face of basic unfairness and a recognition that persons' rights shall be controlled by private lawmakers without the consent, express or implied, of those affected.

Id. at 174.

The reasonable expectations doctrine is intended to protect "objectively reasonable expectations" of insureds and beneficiaries "even though painstaking study of the insurance policy provisions would have negated those expectations." Rodman State Farm Mutual Automobile Ins. Co., 208 N.W.2d 903, 906 (Iowa 1973).

The reasonable expectations doctrine is applied when evidence of the underlying negotiations or other circumstances is presented to show the insured had objectively reasonable expectations regarding the terms of his insurance which painstaking study of the policy provisions would have negated. Rodman, 208 N.W.2d at 906; Cairns v. Grinnell Mutual Reinsurance Co., 398 N.W.2d 821, 825 (Iowa 1987); Farm Bureau Mutual Insurance Co. v. Sandbulte, 302 N.W.2d 104, 112 (Iowa 1981). Its application turns attention to "the basic agreement, to the concept of substance over form." C & J Fertilizer, 227 N.W.2d at 177.

The reasonable expectations doctrine may be applied even where the language, whose effect is disputed, is unambiguous. Rodman, 208 N.W.2d at 906; C & J Fertilizer,

227 N.W.2d at 177; Cairns, 398 N.W.2d at 825. The reasonable expectations doctrine may also be applied even where the language would not be misunderstood. C & J Fertilizer, 227 N.W.2d at 177; Cairns, 398 N.W.2d at 825.

Plaintiff's argues the reasonable expectation doctrine is not applicable where an ordinary layman would not misunderstand the coverage and there are no circumstances attributable to the insurer which foster coverage expectations. Plaintiff's position is an ordinary layman would not misunderstand the policy's coverage and there are no circumstances which could have fostered the coverage expectations in Sorenson. Therefore, they argue reasonable expectations doctrine is not applicable.

Defendants argue the case at bar is consistent with the cases to which the reasonable expectations doctrine has been applied. They argue because the trial court found, as a matter of fact, David Sorenson intended to purchase auto insurance coverage for all members of his household and all motor vehicles owned by his family, that Sorenson believed he had obtained such coverage from Mutual. When the accident occurred, Sorensons had not had an opportunity to read the insurance policy, or the insurance application. Sorensons claim they were never orally informed of the existence of the exclusion. They contend they first learned plaintiff was relying on the exclusion to deny coverage after the accident.

While not addressed by the trial court, we find another provision relevant. We will affirm the trial court on any ground whether argued or not. The trial court found the 1969 Chevrolet pickup was purchased as a replacement for the Chevrolet Bel Air. The trial court also found it was the intent of defendant to obtain insurance for all family members. There is substantial evidence to support these findings. It is agreed the accident happened nine days after the replacement vehicle was acquired. The policy also provided

> "Your covered auto" means:
> (a) Any vehicle shown in the Declarations.
> (b) Any of the following types of vehicles of which you acquire ownership during the policy period, provided that you ask us to insure it within thirty days after you become the owner:
> 1. a private passenger auto.
> 2. if not used in any business or occupation, a pickup, panel truck, or van. If the vehicle replaces one shown in the Declarations, you have to ask us to insure it within thirty days only if you wish Damage to Your Auto Coverage to apply to the replacing vehicle.
> * * *

There clearly then was coverage under this provision. The company had been asked to insure four vehicles and only four were being insured.

We find error on plaintiff's last two contentions was not preserved at the trial court level. We, therefore, do not address them on appeal. See Thomas Truck & Cast Co. v. Buffalo Cast & Wheel Corp., 210 N.W.2d 532, 535 (Iowa 1973).

AFFIRMED.