FILED
MAY 20 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

24

ROBERT G. BROOKS, Administrator of the Estate of MARK WILLIAM BROOKS, deceased,

Appellant,

v.

FARM & CITY INSURANCE COMPANY, a corporation, and ARNOLD HAXMEIER,

Appellees.

Filed May 20, 1977

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2-58071

Appeal from Dubuque District Court - Frank D. Gilloon, Jr., Judge.

Appellant appeals from decree which denied reformation of an automobile insurance policy. Affirmed.

Fuerste, Carew & Coyle, of Dubuque, for appellant.

Davis, Scott & Grace, of Des Moines, for appellee, Farm & City Insurance Company.

O'Connor, Thomas, Wright, Hammer, Bertsch & Norby, of Dubuque, for appellee, Arnold Haxmeier.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff appeals trial court's ruling which denied reformation of an automobile insurance policy on grounds of mutual mistake. We affirm.

Mark Brooks, then a minor, purchased a car with funds borrowed from a bank with his parents acting as surety on the note. Mrs. Eunice Brooks, Mark's mother, called the Miller Insurance Agency and indicated the need for insurance on the car and her desire for "full coverage". When her son went to sign the policy application, it was only for liability, medical payments, and uninsured motorists coverages. There was a great deal of conflicting evidence whether Mark knew at the time he signed the policy application that it was for less than "full coverage". Mark's car subsequently was destroyed by fire and he sought reformation of the policy to include comprehensive coverage.

At the outset, this appeal does not raise any issue whether Mrs. Brooks has a cause of action against the Miller Insurance Agency for breach of duty to her as a surety. But rather, it is Mark suing on the basis of mutual mistake. The evidence as to whether Mark knew the content and terms of the policy application was hotly contested with the parties presenting conflicting evidence. In our de novo review, while we are not bound by trial court's findings of fact, they are entitled to weight, especially when dealing with conflicting testimonial evidence. Northwestern Nat. Bank v. Verschoor, 230 N.W.2d 505, 506-07 (Iowa 1975). One who signs a contract without reading it ordinarily is bound by its terms. *See* Wallace v. Spray, 248 Iowa 100, 107, 78 N.W.2d 406 (1956). We are satisfied that plaintiff failed to show mutual mistake by clear and convincing evidence. Nor does the evidence establish any negligence on the part of Haxmeier to Mark in his handling of the policy application. Schuknecht v. Western Mutual Insurance Co., 203 N.W.2d 605 (Iowa 1973).

Plaintiff alternatively contends that he was a third party beneficiary of an insurance contract made earlier between his mother and Miller Insurance Agency. Overlooking the point whether Mark was able to later modify it, plaintiff's evidence wholly failed to show that the preliminary telephone conversation between Mrs. Brooks and the Miller Insurance Agency ever resulted in any type of contract.

Trial court's judgment hereby is affirmed.