IN THE COURT OF APPEALS OF IOWA

No. 1-108 / 00-0672
Filed May 23, 2001

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CLERK SUPREME COURT

ROCHELLE E. REYNOLDS,
Appellant,

vs.

OZARK NATIONAL LIFE INSURANCE COMPANY, DUKE DIERKS and NIS FINANCIAL SERVICES, INC.,
Appellees.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Rochelle E. Reynolds appeals the dismissal on summary judgment of her negligence and breach of contract action against an insurance company, an insurance agent, and mutual fund vendor. **AFFIRMED.**

Morris L. Eckhart, Vinton, for appellant.

Larry W. Joye and Walter M. Brown of Morrison & Hecker, L.L.P., Kansas City, Missouri, and James Hellman of Dutton, Braun, Staack, Hellman & Iverson, P.L.C., Waterloo, for appellees.

Heard by Vogel, P.J., and Zimmer and Hecht, JJ.

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VOGEL, P.J.

Rochelle E. Reynolds appeals an adverse summary judgment ruling on her negligence and breach of contract action against Ozark National Life Insurance Company, Duke Dierks, and NIS Financial Services, Inc. (referred to individually as Ozark, Dierks, and NIS, and collectively as the defendants). Because we agree with the district court that the insurance policies had lapsed and no material fact remained in dispute, we affirm.

Background Facts and Proceedings. In 1991 Reynolds' husband, James B. Reynolds, also know as J.R. Reynolds, was issued Ozark life insurance policy number 467573. J.R.'s application for the policy, which bore only his signature, was fully filled out, clearly indicated he was the proposed owner of the policy, listed Reynolds as the primary beneficiary, and specified that he was seeking a spouse rider to insure Reynolds' life. The line designated "Signature of Spouse (if coverage applied for)" was left blank.

A separate application form for the spouse rider was attached but provided only limited information, such as Reynolds' birthplace, height, weight and health information, and the name of the contingent beneficiary. Among the seemingly key provisions left blank were the name of the proposed insured and another line with directions to "Complete If Applicant-Owner Is Not Proposed Insured." Reynolds signed the spousal rider application above the line for "Signature of Applicant."

The policy, a term life policy with no cash value, was issued listing J.R. as the insured, and with a spouse rider that insured the life of Reynolds without

specifically identifying her by name. In both cases the premium schedule stated the owner of the policy and rider were "as shown on the application," and the policy specifically defined "owner" as whoever was named in the application as the owner, whether or not that person was the insured. The policy further provided it would lapse if a premium payment was not made before the end of the grace period, but did provide an option for reinstatement. The only other document signed in regard to the term life policy was a form entitled "Amendment to Application of: James B. Reynolds," which increased the coverage volume on J.R. That document bore the signature of both Reynolds and J.R. above the line designated for "Insured's Signature."

In 1992 J.R. applied for and was issued Ozark life insurance policy number 507471, a modified whole life policy insuring the life of J.R. Once again Reynolds was listed as the beneficiary, with the policy application clearly indicating J.R. as the proposed owner. No application document was filled out by or signed by Reynolds. The policy provided that it could lapse if a premium was not paid before the end of the grace period, but also that it could be kept in effect by an automatic premium loan or by nonforfeiture provisions.

The policy was offered and issued as part of a financial package called the "Balanced Program." In addition to the life insurance policy, Reynolds and J.R. became co-owners of a Pioneer Fund mutual fund account. The fund was set up through NIS by Dierks, who was both a licensed insurance agent with Ozark and a registered representative with NIS. J.R. authorized Ozark to forward to Pioneer Services Corporation any monies accumulated in excess of the premium

payments, for purchase of Pioneer Fund shares. The only other document executed in conjunction with the policy or mutual fund was an account authorization card, which allowed monthly account debits for payment of "insurance premiums and/or mutual fund purchases." Although signed by both Reynolds and J.R., the card indicated the account was in the name of J.R. only, and listed J.R. as the policy holder.

At the time each policy was issued, a post office box served as the couple's mailing address. In 1995 their mailing address was changed to J.R.'s business address. The exact date of change is unclear, but it appears to have been some time prior to April of that year.

In February 1995 Ozark was unable to make the automatic premium withdrawal as the authorized account had been closed. On April 5, 1995, Ozark sent a letter requesting a check for both policy premiums or a deduction authorization from a new account. The letter was sent to J.R. at the business address, notifying him that the check or authorization form needed to be received within ten days to keep his coverage current. A special lapse notice on the term insurance, dated June 7, 1995, was also sent to J.R. at his business address. Three subsequent letters regarding the whole life insurance contract, including the notice of lapse, were sent to J.R. at the post office box.

Neither policy contained a provision requiring Ozark to provide notice of nonpayment or lapse to an owner, insured, beneficiary or any other interested person. The notices to J.R. were sent as part of Ozark's company policy to inform owners when a policy goes into lapse or is subject to nonforfeiture

options. The company did not have a policy of providing notice to non-owner beneficiaries or insureds. Reynolds received no notice of the lapses, written or otherwise, as Ozark did not consider her to be an owner of either policy.

It is undisputed that J.R. failed to make the premium payments, that the policies went into lapse as a result of this failure, and that J.R. made no effort to reinstate either policy. Due to the limited cash value of the whole life policy, Ozark was unable to use the automatic premium loan provision. Since J.R. made no election under the nonforfeiture provisions of that policy, Ozark applied its default procedure and used the policy's accrued cash value to purchase an extended term insurance policy. The extended policy terminated in May 1995.

When J.R. died in 1996, Reynolds attempted to make claims under both the term and whole life polices. After Ozark denied these claims, Reynolds filed suit for breach of contract, negligence, and bad faith. At summary judgment Reynolds consented to the dismissal of her bad faith claim, and the district court found in the defendants' favor on the remaining breach of contract and negligence claims. It is from this ruling that Reynolds appeals.

Scope of Review. Summary judgment rulings are reviewed for correction of errors at law. Iowa R. App. P. 4; *General Car & Truck Leasing Sys., Inc. v. Lane & Waterman,* 557 N.W.2d 274, 276 (Iowa 1996). Where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Iowa R. Civ. P. 237(c); *City of West Branch v. Miller,* 546 N.W.2d 598, 600 (Iowa 1996). In making this determination, the court reviews the pleadings, depositions, answers to

interrogatories, admissions on file, and affidavits, if any. *City of West Branch*, 546 N.W.2d at 600.

All facts are viewed in the light most favorable to the party opposing the motion for summary judgment. *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915, 917 (Iowa 1997). However, a party resisting a summary judgment may not simply rely upon the pleadings, but must "set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered." Iowa R. Civ. P. 237(e). Although summary judgment is improper where reasonable minds could differ on resolution of the matter before the court, *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996), no fact issue exists if the dispute is over legal consequences flowing from undisputed facts. *City of West Branch*, 546 N.W.2d at 600.

Ownership of the Policies. The only material fact in dispute at the summary judgment hearing was whether Reynolds was an owner of the policies. Reynolds reasoned that a demonstrated ownership interest gave rise to a duty on the part of the defendants to provide her with notice of nonpayment or lapse, and that the defendants' failure to give such notice not only breached the insurance contracts but also negligently caused the lapse of the policies.[1] Upon review of the record we concur with the district court's assessment that there was no material factual dispute as to legal ownership of either policy.

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[1] Although Reynolds argued there were additional material facts in dispute, her entire argument hinges on her contention that she is an owner of one or both polices. She does not argue that any defendant had a duty to provide her notice in her status as a non-owner beneficiary or insured, and she concedes Ozark had no policy that would require such a notice.

Every piece of tangible evidence points to the conclusion J.R. alone owned the whole life policy, which was issued with the mutual fund as part of the Balanced Program. The only written documents pertaining to the Balanced Program that indicate Reynolds' ownership interest are in no way related to the insurance policy. Nor can Reynolds point to a specific verbal statement by any of the defendants or their agents that demonstrates her policy ownership. She makes only vague statements as to her general impression that she owned this modified whole life policy just as she owned the mutual fund account and points to the fact that no defendant ever informed her she was not the owner. Her unsupported statements, without more, do not raise a disputed issue of material fact on the ownership of the whole life policy.

Reynolds presents little more evidence in regard to the term life policy, and nothing beyond her purported general understanding of ownership supports a contention that she was a co-owner of the main policy. She points to the application form she filled out to provide information for the spouse rider, specifically noting the line for the name of the owner, to be filled in only if the owner was different from the proposed insured, was left blank. She reasons this means that she, as the applicant, owned the spouse rider. When reviewing the policy's definitions and terms, however, it appears this is simply not the case.

Reynolds' name appears nowhere in the policy, and she is referred to only as "spouse" on the rider schedule. Moreover, the policy language indicates the rider is part of the primary policy, and clearly states, "[t]he Owner of the Policy has control of this Rider." It is also telling that, beyond the information necessary

to issue the rider, the bulk of Reynolds' application is blank. If Reynolds did in fact independently own the spouse rider, it is curious that information required of J.R. in his application – full name, address, social security number, occupation and employer, primary beneficiary, family coverage information, and volume amounts – was unnecessary to Reynolds' application.

Even if the blank ownership line was sufficient to demonstrate a disputed issue of fact on the question of the rider ownership, such would not defeat the defendants' summary judgment request. As the rider is not in any way at issue in this case, its ownership cannot be said to be a genuine and material fact in dispute. *See Hall v. Barrett*, 412 N.W.2d 648, 650 (Iowa Ct. App. 1987) (noting that the disputed fact must be one that might affect the outcome of the case, in that a reasonable jury could return a verdict for the nonmoving party). The rider insured Reynolds' life, and this suit arises out of her alleged right, as a primary beneficiary, to insurance proceeds available upon J.R.'s death under the main policy. J.R., as owner of the main policy, had an absolute right to control and maintain the insurance on his own life.

Reynolds further argues that, regardless of her actual ownership status, the defendants are equitably estopped from denying that status as they led her to conclude she was in fact an owner of the policies. She also contends that an application of the reasonable expectations doctrine to these actions firmly establishes her ownership interest. In support of these arguments she offers only her assertion that the documents she signed and viewed were confusing in that some did refer to her as an owner and that they, in conjunction with her

conversations with the defendants and their agents, left her with the impression that she was an owner of the policies. These facts are insufficient for Reynolds' claims to survive summary judgment.

The documents in which she was specifically referred to as an owner were inapplicable to the insurance policies, and she offers no proof, beyond her own generalized assertions, that she was ever told she was the owner of the policies. The blank ownership line on her application for the spousal rider, in light of the remaining evidence, is simply not enough to send her arguments to a jury. Reynolds' failure to supply disputed material facts on the ownership issue is fatal to her equitable estoppel and reasonable expectations arguments, and neither doctrine successfully establishes an otherwise absent ownership interest. Viewed in the light most favorable to Reynolds, the record does not demonstrate she owned either the whole life or term life policy.

Notice to J.R. Nor can Reynolds support her claims based upon Ozark's policy of sending notices to owners, as the company did send J.R. multiple notices of nonpayment and lapse. While Reynolds now disputes whether J.R. actually received all the notices, this contention is waived as Reynolds did not set forth the claim in her statement of disputed material facts and did not file a motion under Iowa Rule of Civil Procedure 179(b) to expand or reconsider the summary judgment ruling. *See Vande Kop v. McGill*, 528 N.W.2d 609, 613-14 (Iowa 1995) (holding that error was not preserved on the issue of whether the district court failed to consider a submitted claim in its summary judgment ruling,

where a party did not raise the issue in the summary judgment resistance or attached affidavit, and no motion to reconsider was filed).

The record, even viewed in the light most favorable to Reynolds, creates no factual dispute sufficient to send the question of ownership to a jury. Since there is no established obligation to provide notice to Reynolds as a non-owner, the policies lapsed after notice to their owner, and the owner took no efforts to have the policies reinstated or to select among nonforfeiture options, Reynolds had no entitlement to any death benefit under either policy. This fact alone requires dismissal of her breach of contract claim, and all but one element alleged under her negligence claim.[2]

Duty to Reappropriate Assets. Lastly, Reynolds contends the defendants were negligent in failing to use the cash value of the policies, the mutual fund or other assets of J.R. and Reynolds to pay the policy premiums. This allegation is wholly without factual support. The record clearly demonstrates that policy number 467573 was a term policy with no cash value and that while the limited cash value of the whole life policy was insufficient to activate the automatic premium loan provision, the value was applied to extend the length of coverage. While the Balanced Program allowed funds in excess of the premium

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[2] Reynolds also forwards an argument that the defendants breached a duty of good faith inherent in the insurance contracts, but makes no cogent argument in support of this theory, offering only a general recitation of the doctrine. Moreover, such an allegation is not a part of the petition, and appears to be raised for the first time on appeal. As such is it not properly before this court, and we give it no consideration. *See In re Estate of Crabtree*, 550 N.W.2d 168, 171 (Iowa 1996) (holding matters not raised before the district court are deemed waived).

on the whole life policy to be used to purchase shares in the mutual fund, there is no document, written policy or other evidence that Ozark, Dierks or NIS had any authority to liquidate the mutual fund to make insurance premium payments. Nor is there a basis, as Reynolds' implies, to impose on the defendants a duty to advise Reynolds and J.R. to pay the premiums by either liquidating the mutual fund or using it as security for a loan.

Having failed to establish any material fact in dispute, the petition contained no sustainable claim for breach of contract or negligence. As such it was properly dismissed, and we affirm the district court's summary judgment ruling in the defendants' favor.

AFFIRMED.