

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 09 1988

CLERK SUPREME COURT

**LUZ MONCIVAIS, JR., and
BARBARA MONCIVAIS,**

Plaintiffs-Appellees,

vs.

**FARM BUREAU MUTUAL INSURANCE
COMPANY,**

Defendant-Appellant.

Filed March 9, 1988

251

7-449

87-415

Appeal from the Iowa District Court for Muscatine County (C3831-786),
J L. Burns, Judge.

Defendant appeals the grant of summary judgment to the plaintiffs by
the district court. **AFFIRMED.**

John C. Hendricks of Stanley, Lande, Coulter & Nepper, Muscatine, for
defendant-appellant.

Eric M. Knoernschild of Hintermeister & Knoernschild, Muscatine, for
plaintiff-appellee.

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

HAYDEN, J.

252

Defendant, Farm Bureau Mutual Insurance Company (Farm Bureau), appeals the grant of summary judgment to the plaintiffs, Luz Moncivais Jr. and Barbara Moncivais, by the district court. Farm Bureau asserts the applicable provision in the homeowner's policy involved herein is not ambiguous, at least under the circumstances of this case, and excludes coverage in this case when properly interpreted.

The homeowner's policy at issue here was between Farm Bureau and Dwight and Arlene Cooper. Mrs. Cooper operated a baby-sitting service in her home, which service was used by the Moncivais for the care of their infant, Aubrie. On August 3, 1981, Mrs. Cooper put Aubrie in a crib with another child and then left the room. A string that held a toy to the crib rail somehow got tangled around Aubrie's neck, causing her death. The Moncivais brought an action for wrongful death against the Coopers and obtained a judgment. The Moncivais then brought this direct action against Farm Bureau to satisfy the judgment, alleging coverage under the Coopers' homeowner's policy.

Farm Bureau denied coverage, contending the following exclusion in the policy applied:

This policy does not apply:

1. Under Coverage E--Personal Liability . . .

d. to bodily injury or property damage arising out of business pursuits of any insured except activities therein which are ordinarily incident to non-business pursuits.

Both Farm Bureau and the Moncivais filed motions for summary judgment, submitting that no genuine issues of material fact existed. The district court agreed and granted summary judgment in favor of the Moncivais. This appeal followed.

It is undisputed Mrs. Cooper's baby-sitting service was a business pursuit. The issue in this case, therefore, is whether Mrs. Cooper's negligent act of placing Aubrie in the crib with another child and then leaving them unattended fell within the exception to the business pursuits exclusion so as to provide coverage. The exception encompassed activities within a business pursuit "which are ordinarily incident to non-business pursuits."

We note, as did the district court, the issue of insurance contract interpretation is not a new one. As stated in Cairus v. Grinnell Mutual Reinsurance Co., 398 N.W.2d 832 (Iowa 1987):

Well-established principles govern our interpretation of this insurance policy, a form of written contract. Iowa Rule of Appellate Procedure 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.

The object of contract interpretation is to ascertain from the language "the intent of the contracting parties at the time the contract was made." Home Federal Savings and Loan Association v. Campney, 357 N.W.2d 613, 617 (Iowa 1984). When, as here, neither party offers extrinsic evidence concerning the meaning of the relevant contract language, the process of construing or interpreting the meaning of the words used is a matter for the court to decide as a question of law. Farm Bureau Mutual Insurance Co. v. Sandbulte, 302 N.W.2d 104, 108 (Iowa 1981); Connie's Construction Co. v. Fireman's Fund Insurance Co., 227 N.W.2d 207, 210 (Iowa 1975).

Ambiguity exists if, "after the application of pertinent rules of interpretation to the face of the instrument, a genuine uncertainty results as to which one of two or more meanings is the proper one." Fraternal Order of Eagles v. Illinois Casualty Co., 364 N.W.2d 218, 221 (Iowa 1985) (quoting Gendler Stone Products Co. v. Laub, 179 N.W.2d 628, 631 (Iowa 1970)). We construe ambiguous insurance policy provisions in a light favorable to the insured because insurance policies constitute adhesion contracts. Gateway State Bank v. North River Insurance Co., 387 N.W.2d 344, 346 (Iowa 1986). It is therefore incumbent upon an insurer to define clearly and explicitly any limitations or exclusions to coverage expressed by broad promises. *Id.* at 346; Bankers Life Co. v. Aetna Casualty & Surety Co., 366 N.W.2d 166, 169 (Iowa 1985). In examining an insurance policy, however, we will not "write a new contract of insurance between the parties" where there is no ambiguity. Stover v. State Farm Mutual Insurance

Co., 189 N.W.2d 588, 591 (Iowa 1971). We avoid straining the words and phrases of the policy "to impose liability that was not intended and was not purchased." Gateway, 387 N.W.2d at 346; State Farm Auto Insurance Co. v. Malcolm, 259 N.W.2d 833, 835 (Iowa 1977).

Id. at 823-24.

The question of whether providing child care for compensation is an activity within a business pursuit "which [is] ordinarily incident to non-business pursuits" has been addressed in a number of other jurisdictions. Those that have answered the question in the affirmative, although utilizing differing rationales, include California, Kentucky, Minnesota, and Missouri. See Crane v. State Farm Fire and Cas. Co., 5 Cal.3d 112, 95 Cal. Rptr. 513, 485 P.2d 1129 (1971); Foster v. Allstate Ins. Co., 637 S.W.2d 655 (Ky. App. 1981); Bankers Standard Ins. Co. v. Olwell, 309 N.W.2d 799 (Minn. 1981); Western Fire Ins. Co. v. Goodall, 658 S.W.2d 32 (Mo. App. 1983). Those that have answered the question in the negative include Alabama, Florida, and Oregon. See Stanley v. American Fire & Cas. Co., 361 So.2d 1030 (Ala. 1978); Peterson v. Highlands Ins. Co., 328 So.2d 49 (Fla. App. 1976); Allstate Ins. Co. v. Kelsey, 67 Or. App. 349, 678 P.2d 748 (1984).

The divergence in these answers is caused by differing analytical approaches to the question. As noted by the Kentucky Court of Appeals:

The Alabama Court would have us look to whether the tortious conduct of the insured was conduct ordinarily incident to his particular business pursuit. If this view is correct, then there is plainly no coverage here because supervision of a child is ordinarily incident to baby-sitting or child care. The California Court and our own first reading of the exception would have us look to whether the tortious conduct was conduct ordinarily incident to nonbusiness pursuits, regardless of the fact that it may have been conduct ordinarily incident to the particular business pursuit. If this view is correct, then its effect would be to read the exception as manifesting an intention to provide coverage for ordinary homeowner or domestic activities such as child care even though money might be earned from them.

Foster, 637 S.W.2d at 657.

We believe both the Alabama and California interpretations of the exception are reasonable. Thus, in keeping with the aforementioned rule that ambiguous

insurance policy provisions are to be construed in the light favorable to the insured, we adopt the California interpretation and conclude the exception to the business pursuits exclusion applies in this case.

AFFIRMED.