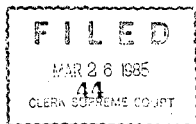


IN THE COURT OF APPEALS OF IOWA



AUDREY BRYANT,)

Plaintiff-Appellant,)

vs.)

Filed March 26, 1985

JOHN S. GRAVES, RAE ANN)

McCULLOUGH, individually, RAE ANN)

McCULLOUGH, as Administrator of the)

Estate of ROBERT H. McCULLOUGH,)

Defendants,)

ALLSTATE INSURANCE COMPANY, A)

Corporation, THE WESTERN COMPANIES,)

a Corporation, and WESTERN FIRE)

INSURANCE COMPANY, A Corporation,)

Defendants-Appellees.)

5-42
84-750

Appeal from the Iowa District Court for Scott County - J. Hobart Darbyshire, Judge.

Plaintiff appeals the summary judgment entered in favor of defendant insurers. AFFIRMED.

H. Reed Doughty of Winstein, Kavensky, Wallace & Doughty, Rock Island, Illinois; and Kent A. Simmons of Liebbe & Simmons, Davenport, Iowa, for plaintiff-appellant.

Richard G. Hileman, Jr., of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, Iowa, for defendants-appellees Western.

Jack E. Dusthimer of Goebel & Koury, Davenport, Iowa, for defendant-appellee Allstate.

SCHLEGEL, J.

Plaintiff, Audrey Bryant, appeals the summary judgment entered in favor of defendant insurers, Allstate Insurance Company (Allstate) and The Western Companies (Western). We affirm.

Bryant filed this action for declaratory judgment to determine whether she was covered under various insurance policies issued by Allstate and Western. The question of coverage related to a lawsuit in which Bryant was a defendant. That lawsuit arose when John Graves—an off-duty employee of the restaurant and lounge owned by Bryant—was involved in an automobile collision with a motorcyclist. Bryant was sued under the theory of respondeat superior because Graves, although off duty, was in the process of getting change for Bryant's business.

All three parties in the present action filed motions for summary judgment. The trial court denied Bryant's motion, but granted the defendants' motions. Bryant appeals, arguing that the trial court's judgment was incorrect as a matter of law.

We hold that the trial court correctly ruled that Bryant has no coverage under the terms of the insurance policies. As stated in the trial court's opinion:

With regard to the Allstate Insurance policy, either Graves falls within the definition of a named insured, or he does not. It is clear from the record and undisputed that he is not related to Bryant, nor does he reside in her household. It is also clear that he was not operating a vehicle owned by Bryant at the time of the collision. Regardless of the resolution of the ultimate fact question (whether he was within the scope of his employment at the time of the collision), Graves is not a person insured under Section 1 of the Allstate policy

With respect to the Western Companies policy, Section 2-General Liability, provides a clear exclusion, under (b) of the "exclusions" from coverage A (bodily injury liability) and coverage B (property damage liability) for automobiles owned or operated by or rented or loaned to any insured, or any other automobile or aircraft operated by any person in the course of his employment by any insured. The exclusion does not apply to vehicles parked on the premises

owned by the insured, provided such automobile is not owned, rented or loaned to the insured. It is clear from examination of the terms of the policy that under any conceivable fact situation, there is no coverage afforded to Bryant for the collision in which Graves was involved. First and foremost, the death of McCullough resulted from Graves' operation of his automobile. The only conceivable time Bryant would have coverage under the Western policy would be if McCullough had been killed on the premises of the Picadilly Pub or its adjacent parking lots. That is not the case and there is therefore no coverage extended to Bryant by the policy.

Bryant argues that, notwithstanding the terms of the Western policy, she should be granted coverage under the theory of implied warranty or the theory of reasonable expectations. Those theories were both discussed in Farm Bureau Mutual Insurance Co. v. Sandbulte, 302 N.W.2d 104 (Iowa 1981). The record does not contain any of the factual allegations necessary to determine that there was an implied warranty in this situation. See id. at 110-11 (setting forth elements for recovery under the theory). Nor can we say that the doctrine of reasonable expectations should apply in this situation. If, after reading the policy an ordinary layman would not misunderstand the policy's coverage, and there are no circumstances attributable to the insurer that would foster coverage expectations, the reasonable expectation doctrine is inapplicable. See id. at 112-13. In this case, a reasonable person would not be misled by reading the policy. Nor is there a fact question in the record regarding insurance company actions that fostered coverage expectations. Bryant is not covered by the Western policy.

Bryant argues that the Allstate insurance policy contains ambiguous language. However, that argument was not presented to the trial court and cannot be considered here. Aetna Casualty and Surety Co. v. Jewett Lumber Co., 209 N.W.2d 48, 50 (Iowa 1973). The judgment of the trial court must be affirmed.

AFFIRMED.