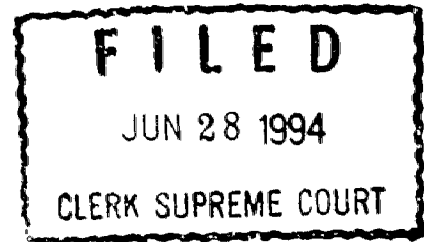


IN THE COURT OF APPEALS OF IOWA

No. 4-167 / 93-1243



KENNETH KNIPPER and KENT KLINE,

Appellants,

vs.

JOY ROTH and BRENDA ROTH,

Appellees,

and

MILWAUKEE SAFEGUARD INSURANCE
COMPANY,

Appeal from the Iowa District Court for Johnson County,
Thomas M. Horan, Judge.

The plaintiffs appeal from the district court's ruling sustaining the defendant insurer's motion for summary judgment dismissing plaintiffs' claim under the defendant's uninsured motorist coverage. **AFFIRMED.**

Marc B. Moen, Iowa City, for appellants.

Richard Hileman, Jr., and Chad M. VonKampen of Simmons,
Perrine, Albright & Ellwood, for appellee.

No appearance by the Roths.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

CADY, J.

This appeal presents the question whether a two-year limitation period contained in a policy of insurance bars an insured's claim for uninsured motorist benefits.

Plaintiff Kent Kline was insured by defendant Milwaukee Safeguard Insurance Company. Milwaukee's insurance policy included uninsured motorist coverage. It also contained an arbitration provision which was subsequently amended to require that any claim by an insured be brought within a two-year period following an accident.

On October 20, 1989, Kline was injured in a one-car accident. He was a passenger in the car. Kline brought this lawsuit against Jay and Brenda Roth as the driver and owner of the car on January 14, 1991. Although the Roths claimed that they had insurance, it was determined in a separate action that they were uninsured. Consequently, on September 28, 1992, Kline moved to amend his petition to assert a claim against Milwaukee under its uninsured coverage. Kline's motion was granted on October 20, 1992.

Milwaukee responded to the amendment by filing a motion for summary judgment asserting Kline's action was barred by the two-year limitation period contained in the policy. Kline resisted the motion. He claimed the arbitration provision was not applicable to the action, the action was commenced within the two year period, the policy amendment was ambiguous and the defendant's interpretation of the policy violated reasonable expectations, was unconscionable or constituted a breach of implied warranty of fitness.

The district court granted Milwaukee's motion for summary judgment. The court determined the two-year limitation period controlled over the ten-year period provided by Iowa Code section 614.1(5) and held that Kline's claim was barred. The court also rejected Kline's other arguments, determining that the policy's limitation period was clear and that Kline had the ability to assert his uninsured claim before the two-year period ran. The court also concluded the policy provision was not unconscionable.

Our standard of review in cases where summary judgment was granted on undisputed facts is to determine whether the trial court correctly decided the movant was entitled to judgment as a matter of law. Hoefer v. Wisconsin Educ. Ass'n Ins. Trust, 470 N.W.2d 336, 338 (Iowa 1991).

Many of the issues asserted by Kline on appeal were recently addressed in Douglass v. American Family Mut. Ins. Co., 508 N.W.2d 665 (Iowa 1993). In Douglass, the Iowa Supreme Court held that an insurance policy may properly reduce the limitation period for an insured to bring an action for uninsured motorist benefits to two years. Id. at 667-68. The court specifically rejected the argument that the limitation should not apply in those situations where the insured does not become aware the tortfeasor is judgment proof until after the two-year time period passed. Id. at 667. Douglass resolves the bulk of Kline's complaints in this case. However, Kline asserts the policy

language is ambiguous and never became a part of the policy because it was contained within the arbitration section of the policy.

The construction of an insurance policy and the interpretation of its language are matters of law for the court if no extrinsic evidence exists concerning the meaning of the policy. Grinnell Mut. v. Employers Mut., 494 N.W.2d 690, 692 (Iowa 1993). The parties presented no extrinsic evidence in this case.

The amended language in dispute was added to the "arbitration" portion of the "uninsured motorist coverage" section of the policy and reads as follows:

No suit, action or arbitration proceedings for recovery of any claim may be brought against us until the insured has fully complied with all the terms of the policy. Further, any suit, action or arbitration will be barred unless commenced within two years after the date of the accident. Arbitration will not commence until we receive your written demands.

Kline finds the paragraph ambiguous because it does not specifically declare the lawsuit must be commenced against Milwaukee, as it does in the first sentence. Consequently, Kline argues he has complied with the policy limitation since the lawsuit against the Roths was filed within two years after the accident. The argument requires us to interpret the language of the policy.

The first sentence of the disputed paragraph declares "no suit . . . for recovery of any claim may be brought against us until the insured has fully complied with the

terms of the policy." The word "us" is defined in the policy to mean Milwaukee. Thus, Milwaukee is clearly the target of the legal proceedings described in the first sentence. The second sentence bars "any suit . . . unless commenced within two years," with no specific guidance concerning who the suit is to be filed against. Kline claims this renders the paragraph ambiguous, which requires us to resolve the ambiguity against the insurer.

An ambiguity does not exist in an insurance policy merely because the parties disagree over the meaning of its terms. A.Y. McDonald Indus., Inc. v. Insurance Co. of N. Am., 475 N.W.2d 607, 619 (Iowa 1991). The language contained in the policy must be given a reasonable interpretation. Steel Products Co., v. Millers Nat. Ins. Co., 209 N.W.2d 32, 36 (Iowa 1973). Furthermore, the law does not require absolute precision in the language of an insurance policy. Cairns v. Grinnell Mut. Reinsurance Co., 398 N.W.2d 821, 824 (Iowa 1987).

The key to the resolution of the issue rests with the connective word "further" found at the beginning of the second sentence. The word is a common transitional device used to keep the thought of a paragraph flowing from sentence to sentence. It connects the preceding sentence with the sentence that follows.

The topic of the paragraph, as expressed in the first sentence, concerns legal actions against the insurer. The word "further" used at the beginning of the next sentence

links the thought of the first sentence with that of the second sentence. Thus, the lawsuit addressed in the preceding sentence naturally refers to the lawsuit in the second sentence. Any other interpretation is not reasonable. Moreover, the parties would have little reason to contract to limit the insured's rights to file lawsuits against third persons. Strained interpretations must be avoided. Youngwirth v. State Farm Mut. Auto. Ins. Co., 140 N.W.2d 881, 883 (Iowa 1966). The language is not ambiguous. The policy requires an insured to bring any claim against Milwaukee within two years. This was not done.

We also reject the claim by Kline that the amended provision never became a part of the contract because it was designated to be placed in the section of the policy labeled "arbitration". Riders become a part of the policy and are entitled to the same weight as integral parts of the agreement. Bankers Life Co. v. Aetna Casualty & Sur. Co., 366 N.W.2d 166, 168-69 (Iowa 1985). Furthermore, parties to a written contract are generally bound by its provisions. Joseph L. Wilmotte & Co. v. Rosenman Bros., 258 N.W.2d 317, 323 (Iowa 1977). In this case, the two-year limitation provision was neither unconscionable or unreasonable. See Douglass, 508 N.W.2d at 665. It also was not mislabeled in such a manner as to vitiate the insured's assent. As a party to a contract, an insured is responsible to read the contents of the policy.

We have examined all the claims raised by Kline and find they are without foundation. We affirm the trial court.

AFFIRMED.