

2011 Ill. App. (2d) 110454-U
Nos. 2-11-0454 & 2-11-0612
Order filed December 30, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PAUL SIEGEL,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 98-MR-672
)	
TRAVELERS INDEMNITY COMPANY;)	
TRAVELERS PROPERTY CASUALTY)	
COMPANY; AND SIEGEL'S COTTONWOOD)	
FARM, INC.,)	Honorable
)	Thomas C. Dudgeon,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Zenoff concurred in the judgment.

ORDER

Held: The trial court properly granted summary judgment against plaintiff where plaintiff was clearly excluded from coverage under insurance policy under which plaintiff sought coverage.

¶ 1 Plaintiff, Paul Siegel, appeals a grant of summary judgment in favor of defendants, Travelers Indemnity Company, Travelers Property Casualty Company, and Siegel's Cottonwood Farm, Inc. Plaintiff was injured in the course of his employment with Siegel's Cottonwood Farm (hereinafter, Siegel's). He sought workers' compensation benefits under a policy issued by Travelers (the parties

refer to Travelers without distinguishing between the two entities listed above, and we will do the same). Travelers denied the claim. Consequently, plaintiff filed an action for a declaratory judgment alleging he was covered under the policy. Travelers answered and also filed a counterclaim seeking declaratory judgment and other relief not material here. The trial court determined that there was no question of material fact that plaintiff had excluded himself from coverage under the policy based on his status as the president of Siegel's. Plaintiff now appeals, and, for the reasons that follow, we affirm.

¶ 2 Summary judgment is appropriate where no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010). While summary judgment is an expeditious manner of resolving litigation and is to be encouraged, caution must be used because it is also a drastic measure and should be granted only when the movant's right to prevail is clear and free from doubt. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). In assessing the propriety of a motion for summary judgment, the record must be construed strictly against the movant and liberally in favor of the party opposing the motion. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Summary judgment presents a question of law, so review is *de novo*. *Pielet v. Pielet*, 407 Ill. App. 3d 474, 492 (2010).

¶ 3 Plaintiff is employed by Siegel's in two capacities. He is the company's president, and he also works as a "mechanical and maintenance worker." In 1995, Siegel's retained the Nowacki Insurance Agency to handle its insurance needs, including worker's compensation. From time to time, a gap in coverage would occur due to Siegel's failure to timely pay a premium, and in such cases, a new policy number would be assigned. Over the years, Siegel's was represented by different insurance agents; however, the policy providing worker's compensation was always issued by Travelers. On April 3, 2008, plaintiff was injured in a fall from a ladder.

¶ 4 Resolution of this appeal turns largely on various items of documentary evidence; hence, we will set forth relevant portions of those documents here. On September 22, 2000, plaintiff signed a form titled “Worker’s Compensation Coverage Rejection Form.” It identifies the “Named Insured” as “Siegel’s Cottonwood Farms & Paul Siegel” and states:

“To Whom It May Concern:

This is to certify that I have been informed that Proprietors and Partners involved in extra hazardous occupations are automatically covered for Workers Compensation benefits unless the individual chooses to reject in writing coverage for those benefits. I have further been informed by NOWACKI INSURANCE AGENCY that my occupation has been classified as extra hazardous.”

I have therefore chosen to make the following election:

 X I CHOOSE TO REJECT WORKERS COMPENSATION BENEFITS that would otherwise be available to me. This election to reject Workers Compensation benefits shall be binding on me and my beneficiaries and in no way shall NOWACKI INSURANCE AGENCY nor any of its employees be held liable for benefits under the Workers Compensation laws due to my having made this election to reject these benefits.

 I choose to have WORKERS COMPENSATION BENEFITS in effect for me and my beneficiaries. In so choosing, my business agrees to pay the additional premium as appropriate from year to year.

This election on my part shall be effective from the date indicated below and shall continue to be effective until I inform NOWACKI INSURANCE AGENCY in writing that I choose to change my election.”

This form was signed by plaintiff and dated September 22, 2000.

¶ 5 Travelers' requested that plaintiff sign an additional document titled "Application for Exclusion of Coverage." It reads as follows:

"It is understood and agreed that I (we) whose signature(s) appear below wish to be excluded from all benefits normally provided on the Workers' Compensation and Employers Liability policy. This is to apply to the present as well as any succeeding policies."

Plaintiff signed the document, which is dated November 2, 2000.

¶ 6 Travelers issued a policy containing the following endorsement, which is titled "Partners, Officers and Others Exclusion Endorsement":

"The policy does not cover bodily injury to any person described in the Schedule. The premium basis for the policy does not include the remuneration of such persons. You will reimburse us for any payment we must make because of bodily injury to such persons.

SCHEDULE

PARTNERS

OFFICERS

OTHERS

PAUL SIEGEL

SUSAN SIEGEL"

The trial court, relying primarily on the first two documents and applying section 3 of the Workers' Compensation Act (Act) (820 ILCS 305/3(17)(b) (West 2008)), concluded that defendants were entitled to summary judgment. Plaintiff now appeals.

¶ 7 An insurance policy is a contract. Therefore, the following interpretive standards apply. Our primary goal is to ascertain and give effect to the intent of the parties. *Oakley Transport, Inc. v. Zurich Insurance Co.*, 271 Ill. App. 3d 716, 726 (1995). Generally, we determine the parties' intent

from the plain language of the policy. *FTI, Inc. v. Cincinnati Insurance Co.*, 339 Ill. App. 3d 258, 260 (2003). Unless the parties have manifested a contrary intent, we must interpret the policy by giving the words used “their plain, ordinary, and popular meaning.” *Virginia Surety Co. v. Adjustable Forms Inc.*, 382 Ill. App. 3d 663, 669 (2008). A policy must be interpreted as a whole. *Traveler’s Insurance Co. v. Eljer Manufacturing Co.*, 197 Ill. 2d 278, 292 (2001). Furthermore, multiple documents executed by the same parties regarding the same transaction should be read together in the absence of evidence indicating that the parties intended them to be read separately. *International Supply Co. v. Campbell*, 391 Ill. App. 3d 439, 448 (2009). In the event an ambiguity remains after applying all interpretive aids, a court must liberally construe a policy in favor of the insured and resolve all doubts in favor of extending coverage. *Clarendon America Insurance Co. v. B.G.K. Security Services, Inc.*, 387 Ill. App. 3d 697, 703 (2008). Construing a contract presents a question of law, to which the *de novo* standard of review applies. *Valley Forge Insurance Co. v. Swiderski Electronics, Inc.*, 223 Ill. 2d 352, 360 (2006). Additionally, interpreting a statute presents a question of law, subject to similar interpretive guidelines and *de novo* review. See *McRaith v. BDO Seidman, LLP*, 391 Ill. App. 3d 565, 577-78 (2009).

¶ 8 Here, the documents executed between the parties demonstrate a clear intent to exempt plaintiff from the operation of the Act (820 ILCS 305/1 *et seq.* (West 2008)). Initially, we note that section 3 of the Act provides, in pertinent part, as follows:

“The corporate officers of any domestic or foreign corporation employed by the corporation may elect to withdraw themselves as individuals from the operation of this Act. Upon an election by the corporate officers to withdraw, written notice shall be provided to the insurance carrier of such election to withdraw, which election shall be effective upon receipt by the insurance carrier of such written notice. A corporate officer who thereafter

elects to resume coverage under the Act as an individual shall provide written notice of such election to the insurance carrier which election shall be effective upon receipt by the insurance carrier of such written notice. For the purpose of this paragraph, a ‘corporate officer; is defined as a bona fide President, Vice President, Secretary or Treasurer of a corporation who voluntarily elects to withdraw.’ 820 ILCS 305/3(17)(b) (West 2008).

Accordingly, the plain language of this section states that a corporate officer may withdraw from the protection of the Act by providing written notice of his or her intention to do so and that the withdrawal remains effective until the officer provides written notice to the contrary.

¶ 9 Plaintiff provided written notice of such an election. He initially signed a document stating “I CHOOSE TO REJECT WORKERS COMPENSATION BENEFITS that would otherwise be available to me.” The document also stated, “This election on my part shall be effective from the date indicated below and shall continue to be effective until I inform NOWACKI INSURANCE AGENCY in writing that I choose to change my election.” Travelers subsequently requested plaintiff to confirm his election by executing a form that stated, “It is understood and agreed that I (we) whose signature(s) appear below wish to be excluded from all benefits normally provided on the Workers’ Compensation and Employers Liability policy. This is to apply to the present as well as any succeeding policies.” Travelers then confirmed its understanding of plaintiff’s election by tendering a policy that stated, “The policy does not cover bodily injury to any person described in the Schedule,” and plaintiff was named in the referenced schedule. We see no principled way of construing these documents as manifesting anything other than an intent on plaintiff’s part to exclude himself from the operation of the Act.

¶ 10 Nevertheless, plaintiff attempts to identify such a reason. He first argues that the case of *General Casualty Co. of Illinois v. Carroll Tiling Service, Inc.*, 342 Ill. App. 3d 883 (2003), compels

a different result. Initially, we note that, in contravention of Illinois Supreme Court Rule 6 (eff. July 1, 2011), plaintiff fails to provide pinpoint citation to the relevant portions of *Carroll Tiling Services, Inc.*, a rather long case, needlessly hindering our review. This failure results in the forfeiture of this argument. *Putnam v. Village of Bensenville*, 337 Ill. App. 3d 197, 201 (2003). Moreover, *Carroll Tiling Services, Inc.*, is distinguishable. In that case, the document purportedly excluding the plaintiff from the operation of the Act read “If you do not want to be covered under this policy, you must specifically reject this coverage by signing this form and returning it to your agent.” *Carroll Tiling Services, Inc.*, 342 Ill. App. 3d at 888. This court found the exclusion to be ineffective because it “applie[d] to insurance coverage only, with no mention of withdrawal from the operation of the Act or rejection of benefits under the Act.” *Carroll Tiling Services, Inc.*, 342 Ill. App. 3d at 893. Conversely, in this case, the form initially signed by plaintiff stated that he was rejecting workers’ compensation *benefits*. Furthermore, this document contains a hold-harmless provision immunizing the Nowacki Insurance Agency from any claims plaintiff might make under “Workers Compensation *laws*.” (Emphasis added.) As noted, a policy must be read as a whole. *Eljer Manufacturing Co.*, 197 Ill. 2d at 292. There would be no need to protect the Nowacki agency from claims under workers’ compensation laws if plaintiff were only waiving benefits under a policy. Plaintiff attempts to characterize this document as an internal, hold-harmless agreement between Nowacki and him. We find this attempt unpersuasive in light of the fact that the document is addressed “To Whom It May Concern” rather than being addressed to the Nowacki agency. Moreover, plaintiff’s contentions to the contrary notwithstanding, the hold-harmless clause is plainly a subpart of the document.

¶ 11 Plaintiff also asserts that, under *Carroll Tiling Services, Inc.*, 342 Ill. App. 3d at 893-94, the form plaintiff initially signed was not properly directed to him. In *Carroll Tiling Services, Inc.*,

342 Ill. App. 3d at 893, the form at issue was directed to a sole proprietor or partner, while the plaintiff was simply a corporate officer. The reviewing court found this created an ambiguity. *Carroll Tiling Services, Inc.*, 342 Ill. App. 3d at 894. In this case, the form at issue clearly states, “I CHOOSE TO REJECT WORKERS COMPENSATION BENEFITS that would otherwise be available to me.” Conversely, the court in *Carroll Tiling Services, Inc.*, observed that “[n]owhere does the form indicate that the signer will be withdrawing from the operation of the Act and be foreclosed from claiming benefits under the Act.” We simply cannot perceive how plaintiff could have been misled as to whom the rejection applied, and we do not find *Carroll Tiling Services, Inc.*, to be of significant guidance on this point. We also note that in *Carroll Tiling Services, Inc.* 342 Ill. App. 3d at 889, the plaintiff had inadvertently been omitted from an endorsement stating who was excluded from the policy, while here, plaintiff was included on such an endorsement.

¶ 12 Plaintiff claims that he believed he was only excluding himself from the operation of the Act in his capacity as the president of Siegel’s. He contends that the exclusion should not apply under the present circumstances since he was injured in his capacity as a mechanical and maintenance worker. A similar argument was rejected in *D. Mayer Landscaping v. Industrial Comm’n*, 328 Ill. App. 3d 853, 858 (2002). There, the court observed that section 3(17)(b) of the Act permits corporate officers to “withdraw themselves *as individuals* from the operation of this Act.” (Emphasis added.) 820 ILCS 305/3(17)(b) (West 2008). Thus, the plain language of the Act precludes such dual-capacity arguments.

¶ 13 Plaintiff also points to the facts that, over the years, Travelers was represented by different insurance agents and it issued policies with different policy numbers. These contentions are unsupported by authority and thus forfeited. *People v. Acevedo*, 191 Ill. App. 3d 364, 366 (1989). Furthermore, the former conflicts with the plain language of the Act and the latter conflicts with

existing case law. Regarding the former, the Act states that an officer may exclude himself or herself—or revoke such an exclusion—by providing written notice to the *insurance carrier*. 820 ILCS 305/3(17)(b) (West 2008). In this case, that was always Travelers. Hence, the relevance of Travelers being represented by different agents is not apparent to us. As for the latter, several cases hold that the mere fact that a policy is given a new number does not render the policy independent of earlier policies. See *e.g.*, *Chatlas v. Allstate Insurance Co.*, 383 Ill. App. 3d 565, 569-70 (2008). We also note that section 3(17)(b) plainly states that an exclusion remains effective until written notice is provided to the insurance carrier that the corporate officer wishes to resume coverage, not until a policy number changes or a new agent is retained by an insured. 820 ILCS 320/3(17)(b) (2008). In short, we find neither of these contentions persuasive, even if they were not forfeited.

¶ 14 Plaintiff points to a correspondence dated September 29, 2000, from the National Council on Compensation Insurance stating that coverage was provided under “the Workers Compensation Law of ILLINOIS,” effective October 28, 2000. He also points to a correspondence from Travelers to Siegel’s agent for healthcare insurance indicating “no exclusion forms [were] signed for the 07/08 term” and that officers were included under the policy. We have already determined that the forms signed by plaintiff in 2000 unambiguously excluded him from coverage under the Act. Thus, the parol evidence rule precludes the consideration of these documents. *Farmers Automobile Insurance Ass’n v. Wroblewski*, 382 Ill. App. 3d 688, 697 (2008) (“Under the ‘parol evidence rule,’ extrinsic evidence is inadmissible to vary or modify the unambiguous provisions of a written contract.”).

¶ 15 Plaintiff claims that he was unaware that his election “would run into perpetuity.” We find this claim completely unpersuasive. Plaintiff signed a document stating, “This election on my part shall be effective from the date indicated below and shall continue to be effective until I inform NOWACKI INSURANCE AGENCY in writing that I choose to change my election.” Hence,

plaintiff was on notice of the fact that the exclusion would continue until he took action to revoke it.

¶ 16 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 17 Affirmed.