NOTICE
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2013 IL App (5th) 120327-U

NO. 5-12-0327

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

JOHN WOMICK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Jackson County.
	)	
v.	)	No. 11-LM-75
	)	
WEST BEND MUTUAL INSURANCE	)	
COMPANY,	)	Honorable
	)	Christy Solverson,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justice Chapman concurred in the judgment.
Justice Goldenhersh dissented.

ORDER

¶ 1 *Held*: The circuit court properly entered summary judgment in favor of the defendant insurer, finding no ambiguity existed in the insurance policy issued to the plaintiff and that the plaintiff's costs to remove damaged tree debris from his property were not covered under the terms of the policy.

¶ 2 The plaintiff, John Womick, appeals the order of the circuit court of Jackson County denying his motion for summary judgment and instead granting the motion for summary judgment filed by the defendant, West Bend Mutual Insurance Company. The plaintiff filed suit against the defendant after it refused to reimburse all of the plaintiff's expenses incurred in removing damaged trees and tree limbs from his property. Both parties filed motions for summary judgment. The plaintiff claimed that under the insurance policy for his property, issued by the defendant, his full expenses should be covered under a broad coverage provision and that certain conflicting provisions seeking to limit or exclude coverage created

an ambiguity that should be resolved in his favor. Conversely, the defendant argued that the plaintiff was reimbursed the maximum amount allowed under the terms of the policy and that there was no ambiguity. For the following reasons, we affirm the ruling of the circuit court.

¶ 3 BACKGROUND

¶ 4 On May 8, 2009, the plaintiff's property (property), located at 1407 Stone Creek Drive, Makanda, Illinois, sustained damage to several of its trees due to a storm that passed through the area. The plaintiff alleged that strong winds broke several tree limbs but that these broken limbs were still connected to the trees and left hanging in precarious positions, causing certain trees to be partially felled, thereby creating a hazard on his property. The plaintiff further alleged that because children play near the area, it was necessary to remove the damaged trees and other debris in order to make his property safe. Expenses to cut down the damaged branches, clean up the area, and remove the cut branches and other debris cost the plaintiff $23,247.18.

¶ 5 The plaintiff's property was insured under a homeowners policy (policy) issued by the defendant. The plaintiff filed a claim with the defendant to recover his expenses for the full amount of $23,247.18. The defendant paid the plaintiff $1,000, which is all it claims the plaintiff is entitled to under the terms of the policy. Conversely, the plaintiff believes that all of his expenses should have been covered under the policy.

¶ 6 The plaintiff filed a complaint against the defendant seeking a declaration that the terms of the policy are contradictory and ambiguous and that the ambiguity should be resolved against the defendant, as the drafter of the policy. Further, the plaintiff asked the circuit court to declare that the reasonable expenses needed to protect the grounds of his property are covered under the policy and that he is entitled to be reimbursed by the defendant for the entire $23,247.18.

¶ 7 Both parties filed cross motions for summary judgment. The circuit court granted the

defendant's motion for summary judgment and denied the plaintiff's motion for summary judgment, finding that the policy was not ambiguous and that under the terms of the policy, the plaintiff was not entitled to additional reimbursement for his expenses over the money already paid by the defendant. The plaintiff filed a motion to reconsider, which the circuit court also denied. The plaintiff's timely appeal followed. For the reasons discussed herein, we affirm the decision of the circuit court.

¶ 8 ANALYSIS

¶ 9 The sole issue on appeal is whether the circuit court erred when it granted the defendant's motion for summary judgment and denied the plaintiff's motion for summary judgment, finding that the terms of the policy were not ambiguous and did not provide coverage for the entire amount of $23,247.18 expended by the plaintiff in order to remove the allegedly hazardous partially felled tree branches from his property caused by the storm on May 8, 2009. "Summary judgment is appropriate only where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Maxit, Inc. v. Van Cleve*, 231 Ill. 2d 229, 235 (2008); 735 ILCS 5/2-1005(c) (West 2010). We review the circuit court's entry of summary judgment *de novo*. *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 371 (2007). In addition, the construction of the terms and provisions of an insurance policy is a question of law, subject to *de novo* review. *Id*. Because we take a fresh look at the record on *de novo* review, we may affirm a circuit court's ruling for any reason we find appearing on the record, regardless of whether it applied a similar rationale. *Hess v. Flores*, 408 Ill. App. 3d 631, 636 (2011).

¶ 10 Interpreting an insurance policy follows the same rules of construction that apply to other types of contracts. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 416 (2006). The "primary objective is to ascertain and give effect to the

intentions of the parties as expressed by the words of the policy." *Rich*, 226 Ill. 2d at 371. "The policy must be construed as a whole, giving effect to every provision." *West American Insurance Co. v. Yorkville National Bank*, 238 Ill. 2d 177, 184 (2010). The type of insurance provided as well as the nature of the risks involved should also be taken into account. *Nicor*, 223 Ill. 2d at 416.

¶ 11 "The words of a policy should be accorded their plain and ordinary meaning," or their meaning as defined within the policy, if applicable. *Id*. If the language of the policy is clear and unambiguous, its terms will be applied as written unless doing so would violate public policy. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). When the words of a policy "are reasonably susceptible to more than one meaning, they are considered ambiguous." *Rich*, 226 Ill. 2d at 371. If an ambiguity is found in the policy, it will be strictly construed against the insurer who drafted the policy, especially if the ambiguity attempts to exclude or limit coverage. *Id*. However, a policy provision will not be rendered ambiguous simply because the parties disagree on its meaning. *Founders*, 237 Ill. 2d at 433. Nor is a provision considered ambiguous if the policy fails to specifically define a term or "because the parties can suggest creative possibilities for its meaning." *Nicor*, 223 Ill. 2d at 417. In other words, we "will not strain to find an ambiguity where none exists." *Rich*, 226 Ill. 2d at 372.

¶ 12 The plaintiff alleges that the policy is ambiguous and, therefore, should be construed in his favor. First, he notes that not only were trees felled as a result of the May 8, 2009, storm, but "much more damage to the property occurred *** necessitating work to make [his] property safe." Particularly, the plaintiff alleges that the storm caused tree limbs to be "partially felled" in that they were "broken but still connected to the tree and hanging in a precarious position."

¶ 13 The plaintiff's argument regarding ambiguity of the policy focuses on several

provisions of the policy as follows:

"Section I - Property Coverages

A. Coverage A - Dwelling

1. We cover:

a. The dwelling on the 'residence premises' shown in the Declarations, including structures attached to the dwelling; and

***

2. We do not cover land, including land on which the dwelling is located.

* * *

E. Additional Coverages

1. Debris Removal

a. We will pay your reasonable expense for the removal of:

(1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or

(2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the Blanket Property Limit. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the Coverage A limit, an additional 5% of the Coverage A limit is available for such expense.

b. We will also pay your reasonable expense, up to $1,000, for the removal from the 'residence premises' of:

(1) Your tree(s) felled by the peril of Windstorm or Hail or

Weight of Ice, Snow or Sleet; or

(2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage C.

The $1,000 limit is the most we will pay in any one loss regardless of the number of fallen trees. No more than $500 of this limit will be paid for the removal of any one tree.

This limit is included in the Blanket Property Limit.

The Section I deductible applies to this coverage.

* * *."

¶ 14 The plaintiff takes issue with the fact that the policy fails to specifically define the terms "debris" or "felled trees," yet it includes definitions of many other terms. He also notes that section I, paragraph C, subparagraph 3 lists property that is *not* covered under the terms of the policy, but also is "contradictory and confusing" in that it lists property that *is* covered in the same subparagraph:

"C. Coverage C - Personal Property

* * *

3. Property Not Covered

We do not cover:

a. Articles separately described and specifically insured, regardless of the limit for which they are insured, in this or other insurance;

***

c. 'Motor Vehicles'.

* * *

(2) We do cover 'motor vehicles' not required to be registered for use on public roads ***.

* * *."

¶ 15 The plaintiff also directs attention to a section of the policy listing exclusions, which states, in part:

"Section I - Exclusions

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

* * *

B. We do not insure for loss to property described in Coverages A and B caused by any of the following. ***

1. Weather Conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph A. above to produce the loss.

* * *."

¶ 16 In sum, the plaintiff argues that the policy is poorly organized, in that it contains several "Section I's," and is ambiguous because of "its definitions and lack of definitions; [its] use of confusing and contradictory language including the repeated use of inexact language, such as the undefined term 'debris' and undefined term 'felled trees' ***." The plaintiff believes these noted ambiguities support his assertion that the policy be construed in his favor and, therefore, the circuit court clearly erred in finding that the language of the policy was clear and unambiguous.

¶ 17 Our review of the policy and provisions germane to the plaintiff's claim for damages incurred from the May 8, 2009, storm reveals no ambiguity, nor does the dissent's rationale convince us otherwise. Rather, we agree with the circuit court's observation that the

"plaintiff is trying to create an ambiguity where none exists."

¶ 18 Covered property, as stated in section I of the property coverages portion of the policy, includes the dwelling ("paragraph A"), other structures ("paragraph B"), and personal property ("paragraph C"). The parties do not contest that the plaintiff's house is considered the "dwelling." Paragraph A further states that although the dwelling is covered under the policy, the policy does *not* cover "land, including land on which the dwelling is located." Paragraph E under that same section, which lists the additional coverages, states that the insurer will pay the insured's reasonable expenses for the removal of "[d]ebris of covered property ***." Thus, a plain reading of this provision reveals that only debris from the dwelling *itself*, which is the plaintiff's house, would be covered in this instance. The plaintiff has not alleged that the May 8, 2009, storm caused damage or that the defendant denied any claim made for reimbursement to remove debris from damage to either his house, other structure, or his personal property. Again, paragraph A explicitly excludes coverage of the land including the land where the plaintiff's house is located. Therefore, debris from or consisting of fallen trees or broken tree limbs would not be covered because they are not part of the plaintiff's house, but instead, are part of the land upon which the plaintiff's house is located.

¶ 19 Moreover, it is clear that the other coverages provided by the policy as set forth in paragraphs B and C also would not meet the plaintiff's needs. The damaged tree limbs and felled trees do not fall within the definition of "other structures," as described in paragraph B, nor can they be considered "personal property," under paragraph C, as trees are deemed to be real property under Illinois law. *Pekin Insurance Co. v. Miller*, 367 Ill. App. 3d 263, 270 (2006).

¶ 20 Paragraph E of the policy does, however, provide partial coverage for felled trees, up to a $1,000 limit. The record shows that the defendant already paid the plaintiff the $1,000

for his expenses to remove felled trees from his property. We fail to see how the policy's lack of definitions for "debris" and "felled trees" in this case creates an ambiguity for which the plaintiff should be reimbursed his full amount of expenses. The policy may not specifically define what the term "debris" entails, but it can be clearly determined that only reasonable expenses incurred from removing debris from covered property is reimbursable. It also can be clearly determined that debris from trees or felled trees is not covered property as stated in the policy's "Property Coverages" section. Therefore, we find no ambiguity. Similarly, we find no ambiguity created by the policy's lack of a "felled tree" definition, especially considering that the plaintiff already received the maximum amount of reimbursement allowed under the policy for his expenses incurred from removing felled trees from his property.

¶ 21 The other noted provisions of the policy with which the plaintiff takes issue for being "ambiguous" do very little to support his argument. The fact that the policy contains several "Section I's" does not render the policy so unorganized or confusing that a reasonable person would likely misconstrue the application of its provisions. We find the same for the policy provisions that list exclusions and what is not covered (even if the same provision states what *is* covered). Certainly, we find no ambiguity regarding application of the policy to the plaintiff's claim for reimbursement of damages incurred from the May 8, 2009, storm. Yet, we must make clear that we do not hinge our finding on whether this policy is ambiguous *only* by application of the facts of this particular case. We also find that the policy is not ambiguous because the plaintiff has not met his burden in showing that the words of the policy or application of the provisions of the policy are "reasonably susceptible to more than one meaning." See *Rich*, 226 Ill. 2d at 371.

¶ 22 The dissent finds that under a *de novo* review, "the grounds are clearly covered [under the policy]," and accordingly, the plaintiff's expenses to remove partially felled tree branches

and associated debris should be reimbursed for the full amount of $23,247.18 or, in the alternative, certain sections of the policy, when read in contrast to other sections, "clearly indicate ambiguity and must be construed against the drafter."

¶ 23 The dissent cites to pertinent parts of the plaintiff's complaint as follows:

> " '4. That the relevant policy language provides at paragraph 6 on page 2 of the policy that the coverage includes the residence and grounds used as a residence. Paragraph 11 there describes the residence as 'the family dwelling, other structures, and grounds[.]' " *Infra* ¶ 35.

However, the plaintiff's own paraphrasing of paragraph 6 of the policy is somewhat inaccurate. Paragraph 6 does not actually state that "*the coverage includes*" the residence and grounds used as a residence, as the plaintiff suggests, but rather, states that " '*insured location' means* ***." (Emphasis added.) It is important to note that this cited language from paragraph 6 of the policy is derived from the definitions section, so that it only sets forth the parameters for the meaning of the term "insured location." It is not a declaration of coverage.

¶ 24 The dissent continues, citing to paragraph 5 of the plaintiff's complaint:

> " '5. Section I, paragraph A provides that the dwelling is the residence premises which, of course, includes pursuant to Section 6.b and 11.a above,[1] the grounds[.]' " *Infra* ¶ 35.

Again, we find the plaintiff's paraphrasing inaccurate. Section I, paragraph A of the policy is within the property coverages section, but it does not state that the "dwelling *is* the residence premises." Instead, it states that the policy covers "[t]he dwelling *on* the 'residence premises' ***." (Emphasis added.) More importantly, as we discussed earlier in our analysis, subparagraph 1.b of this same section clearly states that the policy "do[es] *not* cover

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[1]Section 11.a is also in the definitions section of the policy and provides, in part, that "residence premises" means the "family dwelling, other structures, and grounds ***."

land, including land on which the dwelling is located." (Emphasis added.) Therefore, contrary to the plaintiff's suggestion, paragraph A in "Section I - Property Coverages" does not state that it covers the entirety of the "residence premises." Instead, it clearly reads that it covers only the *dwelling* on the residence property and specifically excludes the land (grounds).

¶ 25 Paragraph 6 of the plaintiff's complaint is next cited by the dissent:

> " '6. Paragraph B of Section I has exclusions. Paragraph E under Additional Coverages provides for reasonable expenses of removal of debris. Then, the language states as follows: 'We will also [*sic*] pay your reasonable expense, up to $1,000.00, for the removal from the residence premises of your trees felled by the perils of Windstorm ...' " *Infra* ¶ 35.

Omitted in the plaintiff's paraphrase is that paragraph E provides for reasonable expenses of removal of debris "*of covered property* ***." (Emphasis added.) As previously stated, covered property, as set forth in "Section I - Property Coverages," includes the dwelling, other structures, and personal property (as described within the policy), but land is clearly excluded. The $1,000 limit for removal of felled trees is an additional coverage set forth in paragraph E, and the plaintiff has already been reimbursed the maximum $1,000 amount for his expenses.

¶ 26 Accordingly, we also disagree with the plaintiff's allegations in paragraphs 7, 8, 9, 10, and 11 of his complaint, cited by the dissent:

> " '7. Thus, Section I.A of the policy provides for the cost of removal of debris but does not limit to debris from the trees;
>
> 8. The language of paragraph I.B is contradicted by the language of Section I.A.1 which creates an ambiguity in the policy;
>
> 9. That paragraph E.2 of the policy provides for coverage for the reasonable

costs incurred for necessary measures taken solely to protect covered property that is damaged by a peril. (This language, thus, as set forth above would cover the property and the grounds.);

10. That the policy further contains the following exclusion: "We do not insure for loss of property described in Coverages A and B caused by any of the following: '1. Weather conditions.' "

11. A review of the policy in its totality indicates that the policy is confusing and contradictory and ambiguities exist[.]' " *Infra* ¶ 35.

It is true that while section I.A of the policy does not limit coverage to debris from trees, it only applies to covered property, from which land, including trees, is excluded. Therefore, we find no contradiction between this section and paragraph I.B, as the plaintiff suggests. The plaintiff also incorrectly suggests that paragraph E.2 should provide his coverage. The policy states that it will "pay the reasonable cost incurred by [the insured] for the necessary measures taken solely to protect covered property that is damaged by a *Peril Insured Against* from further damage." (Emphasis added.) Paragraph E.3 states that though it does cover trees on the "residence premises," they are only covered when the loss is caused by events[2] other than storm/wind damage, as was the alleged cause of the plaintiff's loss. As such, we disagree with the plaintiff's assertion in paragraph 11 of his complaint.

¶ 27 The dissent then cites to several other provisions of the policy as well, stating:

"Some further provisions of the insurance policy need to be considered along with those noted by the majority. Paragraph 6 definitions reads:

'6. "Insured location" means:

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[2]These events in paragraph E.3 are (a) fire or lightning; (b) explosion; (c) riot or civil commotion; (d) aircraft; (e) vehicles not owned or operated by a resident of the "residence premises"; (f) vandalism or malicious mischief; or (g) theft.

a. The "residence premises";

b. The part of other premises, other structures *and grounds* used by you as a residence; and

(1) Which is shown in the Declarations; or

(2) Which is acquired by you during the coverage period for your use as a residence;

c. Any premises used by you in connection with a premises described in a. and b. above[.]" (Emphasis added.)

Paragraph 11 reads:

'11. "Residence premises" means:

a. The one family dwelling, other structures, *and grounds*[.]' (Emphasis added.)" *Infra* ¶¶ 36-37.

¶ 28 Again, the definitions cited by the dissent for the terms "insured location" and "residence premises," while they include the property grounds, are simply definitions and do not describe the parameters of insurance coverage, which is subsequently set forth within the coverage section of the policy. Accordingly, we affirm the decision of the circuit court granting summary judgment in favor of the defendant.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Jackson County is affirmed.

¶ 31 Affirmed.

¶ 32 JUSTICE GOLDENHERSH, dissenting:

¶ 33 I respectfully dissent. The majority clearly and accurately states the applicable

authority in this appeal, including the virtually black letter law that ambiguity in such a contract of insurance will be construed against the drafter and that our review is *de novo*. In my opinion, however, the majority fails to consider certain sections of the insurance policy which, when read in contrast to the sections cited by the majority, clearly indicate ambiguity and must be construed against the drafter. It also takes a rather cramped view of the clearly articulated complaint in this case, which outlines the inherent ambiguity. Pursuant to the authority cited by the majority, a *de novo* review reveals ambiguity.

¶ 34 Plaintiff's complaint, when read as a whole, clearly articulates ambiguity in the contract of insurance. In pertinent part, plaintiff pleads as follows:

> "4. That the relevant policy language provides at paragraph 6 on page 2 of the policy that the coverage includes the residence and grounds used as a residence. Paragraph 11 there describes the residence as 'the family dwelling, other structures, and grounds;'
>
> 5. Section I, paragraph A provides that the dwelling is the residence premises which, of course, includes pursuant to Section 6.b and 11.a above, the grounds;
>
> 6. Paragraph B of Section I has exclusions. Paragraph E under Additional Coverages provides for reasonable expenses of removal of debris. Then, the language states as follows: 'We will also, and under I, also pay your reasonable expense, up to $1,000.00, for the removal from the residence premises of your trees felled by the perils of Windstorm ...'
>
> 7. Thus, Section I.A of the policy provides for the cost of removal of debris but does not limit to debris from the trees;
>
> 8. The language of paragraph I.B is contradicted by the language of Section I.A.1 which creates an ambiguity in the policy;
>
> 9. That paragraph E.2 of the policy provides for coverage for the reasonable

costs incurred for necessary measures taken solely to protect covered property that is damaged by a peril. (This language, thus, as set forth above would cover the property and the grounds.);

10. That the policy further contains the following exclusion: 'We do not insure for loss of property described in Coverages A and B caused by any of the following: "1. Weather conditions." ';

11. A review of the policy in its totality indicates that the policy is confusing and contradictory and ambiguities exist[.]"

¶ 35 Some further provisions of the insurance policy need to be considered along with those noted by the majority. Paragraph 6 definitions read:

"6. 'Insured location' means:

a. The 'residence premises';

b. The part of other premises, other structures *and grounds* used by you as a residence; and

(1) Which is shown in the Declarations; or

(2) Which is acquired by you during the coverage period for your use as a residence; and

c. Any premises used by you in connection with a premises described in a. and b. above[.]" (Emphasis added.)

¶ 36 Paragraph 11 reads:

"11. 'Residence premises' means:

a. The one family dwelling, other structures, *and grounds*[.]" (Emphasis added.)

¶ 37 Given the authority cited by the majority and our *de novo* review of this question, the appropriate way to read this policy as a whole and plaintiff's complaint as a whole would be

either that, given the sections cited above, the grounds are clearly covered and, accordingly, plaintiff's expenditures of funds to remove debris on those grounds are clearly covered or, alternatively, there is an ambiguity within the insurance policy, which ambiguity should be construed against the drafter and result in the policy coverage of removing debris from the ground. Under either analysis, the decision of the circuit court of Jackson County is in error, and the majority, in its analysis, has followed the same path.

¶ 38 For the reasons stated above, I would, therefore, reverse the order of the circuit court of Jackson County and remand for further proceedings.