

No. 14-0982

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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SAFE AUTO INSURANCE, CO.,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	No. 12 CH 27969
TABITHA KANYARA and ENTERPRISE	)	
RENT A CAR,	)	
	)	Honorable Mary Mikva
Defendants-Appellants.	)	Judge Presiding

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PRESIDING JUSTICE SIMON delivered the judgment of the court.  
Justices Pierce and Liu concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court correctly granted summary judgment and correctly issued a declaration that a claim submitted by an insured was not covered by the policy. The damaged vehicle was not a "covered vehicle" and neither the policy nor the claims process violated the Department of Insurance regulations so as to entitle the insured to relief.

¶ 2 Plaintiff Safe Auto Insurance filed a complaint seeking a declaration that a claim submitted by the insured, Defendant Tabitha Kanyara, was not covered by her policy. The trial court

No. 14-0982

granted summary judgment in Safe Auto's favor, finding that the vehicle that was involved in the accident was not a "covered vehicle" and that Kanyara was not entitled to indemnification. We agree and, therefore, we affirm.

¶ 3

### BACKGROUND

¶ 4 Defendant Tabitha Kanyara was an insured under a policy issued by Plaintiff Safe Auto Insurance Company. She was married to Ibrahim Kanjau, the primary insured. The Safe Auto policy covered the couple's 2008 Toyota Camry and their 2001 BMW X5. The Toyota was financed by Wells Fargo Dealership Services. On May 29, 2011, Kanjau was involved in an accident while operating the Toyota. The accident was reported to Safe Auto. By letter dated June 3, 2011, Safe Auto determined that the Toyota was a "total loss." While Kanyara and Kanjau awaited payment from Safe Auto, they rented a series of vehicles from Defendant Enterprise Rent a Car. Kanyara called Safe Auto on a number of occasions to inquire about the status of the claim payment. On July 26, 2011, about two months after the accident, Safe Auto issued a check for the value of the covered loss to the creditor, Wells Fargo.

¶ 5 On September 7, 2011, Kanjau was involved in a second accident with a Chevrolet vehicle that was rented from Enterprise on September 3, 2011. Kanjau filed a claim with Safe Auto. Safe Auto denied coverage on the basis that the Chevrolet rented from Enterprise was not covered by the policy. Subsequently, Enterprise sued Kanyara for the damage to the Chevrolet. Safe Auto initially appeared in the case to defend Kanyara under a reservation of rights. However, Safe Auto subsequently filed this action seeking a declaration that the loss was not covered by the policy. In the first case, Enterprise ultimately secured a judgment against Kanyara. In this case, the trial court granted summary judgment in favor of Safe Auto, ruling that the loss occasioned by

No. 14-0982

the second accident was not covered by the policy and that Kanyara was not entitled to indemnification for the judgment entered against her in favor of Enterprise.

¶ 6 The policy provides coverage only for "covered vehicles." The 2008 Toyota and the 2001 BMW were expressly designated as covered. The policy also provides that "covered vehicles" include vehicles purchased after the policy period commenced as long as certain conditions were met, as well as vehicles purchased to replace the Toyota or BMW and "temporary substitute motor vehicles." Temporary substitute motor vehicles are defined in the policy as those "rented from a car rental agency or garage and used while the covered vehicle is being serviced or repaired due to a loss covered by the policy."

¶ 7 Kanyara defended against the summary judgment motion in the declaratory action arguing that the rented Chevrolet was a temporary substitute vehicle until she received the check for the lost Toyota and could purchase a new vehicle. Kanyara also argued that Safe Auto failed to comply with the Illinois Administrative Code as it pertains to insurance for private passenger automobiles (50 Ill. Adm. Code 919.80) thereby vitiating its right to a declaratory judgment. It appears that Enterprise is prosecuting this appeal on Kanyara's behalf.

¶ 8 ANALYSIS

¶ 9 We review the grant of summary judgment *de novo*. *Cook v. AAA Life Insurance Co.*, 2014 IL App (1st) 123700, ¶ 24. Summary judgment is appropriate when the pleadings, depositions, admissions and affidavits, viewed in a light most favorable to the nonmovant, fail to establish a genuine issue of material fact, thereby entitling the moving party to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Progressive Universal Insurance Co of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 127-28 (2005). If disputes as to material

No. 14-0982

facts exist or if reasonable minds may differ with respect to the inferences drawn from the evidence, summary judgment may not be granted. *Associated Underwriters of America Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1016-17 (2005).

¶ 10 An insurance policy is construed like any contract, so the determination of the parties' rights and obligations thereunder is a question of law. *Cook*, 2014 IL App (1st) 123700, ¶ 24. The primary goal of contract interpretation is to give effect to the intent of the parties. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2014 IL App (1st) 111290, ¶ 75. A contract must be interpreted as a whole and the plain and ordinary meaning must be ascribed to unambiguous terms. *Id.*

¶ 11 Enterprise offers three basic arguments in support of its position that the trial court's judgment should be reversed. Before addressing those arguments, we will offer our analysis on the threshold coverage issue because when the pertinent, undisputed facts are considered along with the basic legal analysis, it becomes readily apparent that the trial court's judgment should be upheld.

¶ 12 The case brought by Enterprise against Kanyara was for damage to the rented Chevrolet. Kanyara was only entitled to indemnity from Safe Auto if the Chevrolet was a "covered vehicle." Clearly the Chevrolet was not owned by Kanyara so the only potential category it could fall within was the "temporary substitute motor vehicle" category. The theory on which all of Kanyara's arguments are based is that Safe Auto's delay in paying the claim for the first accident was the reason she was renting from Enterprise. But on July 26, 2011, Safe Auto issued a check for over \$15,000 to cover the damage from the first accident. The Chevrolet was not rented until September 3, 2011 and the second accident did not occur until September 7, 2011. Regardless of

No. 14-0982

how broadly "temporary substitute motor vehicle" is defined, it is impossible to consider the vehicle a temporary substitute when it was rented and damaged six weeks after the claim was paid in full.

¶ 13 In addition, the Chevrolet cannot be considered a "temporary substitute motor vehicle" because it was not "rented from a car rental agency or garage and used while the covered vehicle [was] being serviced or repaired due to a loss covered by the policy." Safe Auto declared the car a total loss so this was not a situation covered by that provision. Moreover, the loss did not occur *while* the claim was pending. The parties invoke the "rental reimbursement" provision as some justification for their respective positions, but that has nothing to do with whether a rental vehicle is covered by the policy. It only deals with reimbursement for monies spent by the insured for a rental.

¶ 14 The arguments Enterprise specifically raises on appeal pertain to Safe Auto's delay in issuing a check in payment of the claim relating to the first accident. Enterprise maintains that the delay in payment for more than 60 days after the accident was part of a purposeful scheme to avoid paying replacement sales tax and fees in violation of the Department of Insurance regulations (50 Ill. Adm. Code 919.80(c)(3)(a)(i)). However, the insurance regulations simply provide that if a consumer actually purchases a replacement vehicle "within 30 days after receipt of the settlement" then the insurer must pay the sales tax and transfer and title fees. Thus, a 60-day delay in payment would not successfully subvert the regulation because the regulation is dependent upon when the payment is *received* by the insured. Nothing done by Safe Auto prevented Kanyara from being entitled to sales tax and fees, she simply had to purchase a replacement vehicle within 30 days of receiving her claim payment. Although irrelevant, there is no evidence that she bought a

No. 14-0982

replacement vehicle, and there is no evidence at all that a scheme to defraud existed.

¶ 15 Enterprise's second argument is that the more than 60-day delay in payment means the rented vehicle should be covered as a "replacement vehicle." This is an argument raised for the first time on appeal and is forfeited. See *K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 25. Nonetheless, the policy only covered replacement vehicles if they were purchased by the insured. Perhaps if an insurer unreasonably delayed paying a total loss, causing an insured to rent a vehicle, and that vehicle was damaged during the period of the delay, the insured might have cause to complain. But this is not the case since the rented vehicle was not even rented nor was it in an accident until six weeks after the claim had been paid. While section 919.80, when read in its entirety, would show that the delay by Safe Auto in this case is disfavored, Kanyara could never prove that the delay caused her loss.

¶ 16 Enterprise's third argument is that allowing Safe Auto to escape liability would be inequitable where Safe Auto violated the Department of Insurance regulations. It also contends that the narrow definitions used in the insurance policy violate public policy. However, Enterprise fails to point to any regulation that is violated in this policy and we do not see any part of the policy or the claims process as violative of public policy in general. The insurance regulations show that Kanyara might have been entitled to some benefits she was not afforded, perhaps including reimbursement for renting while awaiting payment, but this case is about coverage.

¶ 17 Although it has already been established that there is no coverage, the shortcomings in appellant's brief are significant enough to warrant mention. The argument section of the brief contains just one citation to authority, and even that citation is to a general point of law and is not

No. 14-0982

in the proper form. That, of course, is improper. *See* Ill. Sup. Ct. R. 341(g-h); Ill. Sup. Ct. R. 6; *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 54. There are several other notable defects in the brief, but suffice it to point out that it is neither the function nor the obligation of this court to act as an advocate or search the record for error. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Enterprise failed both here and in the trial court to set forth a cohesive claim that would entitle it to relief. The trial court correctly entered judgment in Safe Auto's favor.

¶ 18

#### CONCLUSION

¶ 19 Based on the foregoing, we affirm the trial court's judgment.

¶ 20 Affirmed.