2016 IL App (3d) 150252-U

Order filed March 4, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

THERESA A. REEDER and WILLIAM TODD HERMANN,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiffs-Appellants,	)	
v.	)	
AUTO OWNERS INSURANCE COMPANY,	)	
Defendant-Appellee, and	)	Appeal No. 3-15-0252 Circuit No. 14-MR-321
COUNTRY PREFERRED INSURANCE COMPANY,	)	
Defendant-Appellant, and	)	
TIMOTHY C. BURKHARDT and WILLIAM LEVAN,	)	Honorable Stephen Kouri Judge, Presiding
Defendants.	)	

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err when it granted defendant insurance company's motion for summary judgment, finding there was no coverage because the vehicle owners had sold the vehicle prior to the accident for which plaintiffs were seeking recovery.

¶ 2 Plaintiffs Theresa Reeder and William Hermann sought a declaratory judgment that defendant Auto Owners Insurance Co. had a duty to defend and indemnify them in an underlying action they filed against defendants Timothy Burkhardt and William Levan for injuries they sustained in an accident caused by Burkhardt and Levan. The plaintiffs moved for summary judgment and Auto Owners cross-moved. The trial court granted summary judgment in favor of Auto Owners and against Reeder and Hermann, finding that there was no coverage under the Auto Owners policy because the vehicle involved in the accident had been sold two days earlier. We affirm.

¶ 3 FACTS

¶ 4 Plaintiffs Theresa Reeder and William Hermann filed this declaratory judgment action seeking a declaration that they had coverage under an Auto Owners Insurance Company policy issued to Perfect Choice Exteriors, LLC, insuring a 2007 Grand Prix owned by Angela and Lehamon Triplett. The complaint also sought coverage under an Auto Owners umbrella policy issued to Perfect Choice. Angela was the sole shareholder of Perfect Choice and the Grand Prix was insured as a non-owned vehicle on the policy. The declaration page listed the Grand Prix as "principally used for business duties by a 39 year old operator" and the list of scheduled drivers included Angela and a former employee.

¶ 5 The policy included the following pertinent terms. The insuring agreement stated:

> "The attached Declarations describe the **automobile(s)** we insure and Coverages and Limits of Liability for which you have paid a premium. **We** agree

to insure the described **automobile(s)** for those Coverages and Limits of Liability subject to the terms and conditions of this policy."

¶ 6 Section II concerned liability coverage and provided:

"a. **Liability Coverage – Bodily Injury and Property Damage**

We will pay damages for **bodily injury** and **property damage** for which **you** become legally responsible because of or arising out of the ownership, maintenance or use of **your automobile** (that is not a **trailer**) as an **automobile**. **We** will pay such damages:

(1) on **your** behalf;

(2) on behalf of any **relative** using **your automobile** (that is not a **trailer**);

(3) on behalf of any person using **your automobile** (that is not a **trailer**) with **your** permission or that of a **relative**; and

(4) on behalf of any person or organization legally responsible for the use of **your automobile** (that is not a trailer) when used by **you**, a **relative**, or with **your** permission or that of a **relative**."

¶ 7 The policy provided definitions for various terms as follows.

"12. **You** or **your** means the first named **insured** shown in the Declarations

***

13. **Your automobile** means the **automobile** described in the Declarations."

¶ 8 The policy also had an employers' nonownership liability endorsement, which provided:

"1. **COVERAGE**

a. SECTION 11 – LIABILITY COVERAGE extends to:

"(1) a **private passenger automobile** or motorcycle:

(a) **you** do not own or hire;

(b) while used by any person in **your** business; and

(2) a commercial **automobile** (that is not a trailer);

(a) **you** do not own or hire;

(b) while infrequently or occasionally used by **your** employee in **your** business."

b. This coverage extension applies only to:

(1) **you**; and

(2) **your** executive officers and partners, if **you** are a corporation or partnership.

2. EXCLUSIONS

This coverage extension does not apply:

a. to any automobile or motorcycle **you** own or hire;

b. to any **automobile** or motorcycle **you** operate, if **you** are an individual; or

c. to **your** executive officers and partners for any **automobile** they own.

d. to any **automobile** covered by any other provision or extension of the policy."

¶ 9 The umbrella policy issued to Perfect Choice stated it would provide liability coverage as follows: "**We** will pay those sums included in **ultimate net loss** that the **insured** becomes legally obligated to pay as damages because of: 1. Bodily injury." The umbrellas policy defines "Insured" as "the person(s) or organization(s) qualifying as such under the PERSONS AND ORGANIZATIONS INSURED section of this policy." The "PERSONS AND ORGANIZATIONS INSURED" section defines an insured under the policy as follows:

"C. If **you** are designated in the Declarations as a limited liability company, **you** are an **insured**. **Your** members are also **insureds**, but only with respect to the

conduct of **your** business. **Your** managers are **insureds**, but only with respect to their duties as managers.

***

I. Subject to the terms and conditions of this insurance, any other **insured(s)** included in the **scheduled underlying insurance** issued to **you** and shown in the Declarations, but only to the extent that insurance is provided for such other **insured(s)** in the **scheduled underlying insurance**."

¶ 10 On June 28, 2013, Levan and his wife purchased the Grand Prix from the Tripletts for $7,500. The Levans and the Tripletts executed a bill of sale and a sales contract that stated the Levans would assume "full responsibility of the vehicle, that all logo decal must be removed immediately, and that they are responsible for obtaining insurance coverage on said vehicle immediately." The Tripletts transferred the title to the Levans and mailed a notice of sale to the Illinois Secretary of State's office the same day.

¶ 11 Two days later, the Grand Prix was involved in an accident wherein Reeder and Hermann sustained serious injuries. The Grand Prix, driven by either Burkhardt or Levan, crossed the center line and hit the Harley-Davidson tricycle Reeder and Hermann were riding, throwing them from the motorcycle. Burkhardt and Levan fled on foot, leaving the Grand Prix at the accident scene. They were later apprehended and both said the other person was driving. At the time of the accident, Levan had not registered the title or obtained insurance for the Grand Prix. Uninsured/underinsured coverage was provided for the Harley under a policy issued to Reeder by defendant Country Preferred Insurance Co.

¶ 12 Reeder and Hermann brought a negligence and negligent entrustment action against Levan and Burkhardt and sought to recover their damages from Auto Owners. They filed this

declaratory judgment action seeking a declaration that coverage existed under the policy issued to Perfect Choice. Count II of the complaint sought recovery under the umbrella policy. A default judgment was entered against Burkhardt and Levan. Reeder and Hermann moved for summary judgment, arguing the Grand Prix was covered under the policy despite the fact that the Tripletts no longer owned it. According to Reeder and Hermann, per the policy language, the Grand Prix was the covered automobile regardless of its ownership. Country Preferred joined their motion. Auto Owners filed a cross-motion for summary judgment, arguing there was no coverage on the date of the accident because the Tripletts no longer owned the Grand Prix.

¶ 13 Depositions of Angela Triplett and William Levan took place. Levan testified that he owned the vehicle after the sale. He had been waiting for the end of the month when the plates expired to transfer the title and purchase new plates. He and the Tripletts forgot to remove the license plates after the purchase. He was not contacted about the vehicle after the accident and did not know what happened to it. He still had the title document.

¶ 14 Angela testified in her deposition that, after she transferred the Grand Prix to Perfect Choice, she no longer used it for personal business and did not maintain individual coverage. The vehicle stayed at the company location where it was used by a former employee for company business. After the employee left Perfect Choice, the vehicle remained in the company parking lot. She and her husband signed over the title to the Levans and she mailed a notice of sale to the Secretary of State on June 28. She did not execute a document to transfer the license plates and did not remove them. Angela did not know what happened to the Grand Prix after the accident.

¶ 15 The trial court granted Auto Owners' motion for summary judgment and denied Reeder and Hermann's motion. Auto Owners filed a supplementary summary judgment motion, seeking

the dismissal of Reeder and Hermann's claim under the Auto Owners umbrella policy issued to Perfect Choice and a finding that Auto Owners did not have a duty to defend or indemnify Levan and Burkhardt. The trial court granted the supplemental summary judgment motion and found that Auto Owners had no duty to defend or indemnify Levan or Burkhardt. Reeder and Hermann appealed. Country Preferred filed a notice of "joining of a prior appeal."

¶ 16 ANALYSIS

¶ 17 On appeal, Reeder and Hermann challenge the trial court's grant of summary judgment in favor of Auto Owners. They argue that the under language of the Auto Owners policy, there was coverage for the Grand Prix regardless of its ownership. They point to the declarations page which listed the Grand Prix as the insured vehicle without qualifying language limiting its ownership. According to Reeder and Hermann, the Grand Prix remained listed on the policy at the time of the accident and was thus a covered vehicle.

¶ 18 We must first determine whether we have jurisdiction to hear the appeal. Auto Owners argues there is no final and appealable order entered in this case because Country Preferred's request for fees, costs and other relief, as set forth in its answer, remained pending in the trial court. Accordingly, Auto Owners argues, Illinois Supreme Court Rule 304(a) language was required to perfect the appeal, and in its absence, the appeal must be dismissed.

¶ 19 The appellate court's jurisdiction is limited to the review of appeals from final judgments, subject to various exceptions. *Valdovinos v. Luna-Manalac Medical Center, Ltd.*, 307 Ill. App. 3d 528, 537 (1999). For the purposes of an appeal, a judgment is final if it determines the action, or some definite part of it, on the merits so that the only thing left remaining is for the trial court to execute the judgment. *Krause v. USA DocuFinish*, 2015 IL App (3d) 130585, ¶ 17. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken

from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Rule 304(a) applies only to multiple claims, parties, or both. *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 506 (2009). This court considers its jurisdiction *de novo*. *Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 821 (2010).

¶ 20 The trial court's grant of summary judgment and the supplemental grant of summary judgment to Auto Owners determined the merits of Reeder and Hermann's declaratory judgment action. There were no claims pending and the only thing left for the court to do was to execute the judgment. As Reeder's uninsured/underinsured insurer, Country Preferred was a named as a nominal defendant. Reeder and Hermann did not seek any relief from Country Preferred in its complaint for declaratory judgment and Country Preferred filed no independent pleadings, aside from its answer. In the answer, Country Preferred requested that Reeder and Hermann's complaint for declaratory judgment be granted and sought "fees, costs, and for such other and further relief as the Court may deem appropriate." We reject Auto Owner's jurisdictional argument and determine the order granting summary judgment was a final and appealable order. We find this court has jurisdiction to determine the appeal.

¶ 21 We now turn to Reeder and Hermann's argument that Auto Owners summary judgment motion was granted in error. We note Country Preferred adopted Auto Owner's brief with this court's leave. Reeder and Hermann argue that the trial court should have denied Auto Owners summary judgment motion and granted their motion. They submit that coverage existed for the Grand Prix regardless of ownership per the policy language and that the employers' nonownership liability endorsement did not limit but expanded coverage, contrary to the trial

court's interpretation. They claim that because the Grand Prix remained listed on the Auto Owner's policy at the time of the accident, Auto Owners has a duty to defend and indemnify Levan and/or Burkhardt. They also assert that the Grand Prix was used with the Tripletts' permission.

¶ 22 Summary judgment should be granted when the pleadings, depositions and admissions on file, and affidavits, if any, show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). Construction of an insurance policy is a question of law that is appropriately decided through summary judgment. *Steadfast Insurance Co. v. Caremark Rx, Inc.*, 359 Ill. App. 3d 749, 755 (2005). A court's primary function in construing the policy is to ascertain and give effect to the parties' intent as expressed in the policy language. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). A trial's interpretation of an insurance policy and its ruling on a summary judgment motion are reviewed *de novo*. *Valley Forge Insurance Co. v. Swiderski Electronics, Inc.*, 223 Ill. 2d 352, 360 (2006); *Certain Underwriters at Lloyd's, London v. Central Mutual Insurance Co.*, 2014 IL App (1st) 133145, ¶ 7.

¶ 23 Ownership for purposes of insurance is controlled by the intent of the parties and is not governed by the actual transfer of title. *Jadczak v. Modern Service Insurance Co.*, 151 Ill. App. 3d 589, 595 (1987). An insurable interest exists when a person " 'would profit by or gain some advantage by its continued existence and suffer loss or disadvantage by its destruction.' " *Murphy v. State Farm Fire & Casualty Co.*, 2012 IL App (1st) 112143, ¶ 9 (quoting *Reznick v. Home Insurance Co.*, 45 Ill. App. 3d 1058, 1061 (1977)). A person may have an insurable interest even if he does not possess or own the property. *Murphy*, 2012 IL App (1st) 112143, ¶ 9. For liability insurance, an insurable interest may exist apart from ownership, where the

circumstances warrant that the insured may be legally responsible for any damages that resulted from a covered vehicle's use. *Mid-States Insurance Co. v. Brandon*, 340 Ill. App. 470, 474 (1950). Where an owner has delivered possession of the vehicle and transferred the certificate of title, he is no longer liable as an owner even if the buyer did not diligently apply for a new title. 625 ILCS 5/3-112(e) (West 2012); *Perry v. Saleda*, 34 Ill. App. 3d 729, 737 (1975).

¶ 24 The trial court found there was no issue of fact that the car was sold by the Tripletts to the Levans prior to the accident. It also found that the policy did not provide coverage, even if construed against Auto Owners, reasoning that the endorsement applied; that the policyholder was required to be legally responsible for the damages; and that section 3-112 of the Motor Vehicle Code shielded the Tripletts from liability. Finally, the trial court considered that public policy supported the denial of coverage, even where Illinois law is in conflict on the issue.

¶ 25 The parties filed cross-motions for summary judgment and the facts are not in dispute. *Munoz*, 237 Ill. 2d at 432 (parties filing cross motions for summary judgment agree no factual issues exist). The Tripletts sold the Grand Prix to the Levans on a Friday evening, two days before the accident. They received $7,500, executed a bill of sale and transferred title to the Levans. The parties also signed a sales contract in which they agreed the Levans would be responsible for maintaining insurance on the vehicle and assumed full responsibility for the Grand Prix. The Tripletts mailed the notice of sale to the Secretary of State the day of the sale. Although the license plates and Perfect Choice decals remained on the vehicle, the parties intended that the Levans would become the owners of the Grand Prix after the sale. Levan testified he believed he was the owner of the vehicle on the day of the accident. He had planned to complete the title registration with the Secretary of State and obtain insurance but did not do so prior to the accident.

¶ 26 Contrary to the assertion of Reeder and Hermann, Levan was not a permissive user of the Grand Prix at any time, including the time of the accident. The deposition testimonies of Levan and Angela reveal that the Grand Prix was a work car, kept at the Perfect Choice location and used solely for Perfect Choice business. Levan was not a Perfect Choice employee and never had permission of the Tripletts or Perfect Choice to drive the Grand Prix prior to the sale. He testified that he had not driven the vehicle before he bought it. We thus consider that at the time of the accident, Levan was the vehicle's owner and neither he nor Burkhardt were using the vehicle with the permission of the Tripletts.

¶ 27 Reeder and Hermann contend that by rejecting their permissive user argument, the trial court negates the policy's omnibus clause and is contrary to public policy. We do not consider that public policy is implicated under these circumstances. The policy was issued to Perfect Choice, which could not give permission to drive a vehicle it did not own. The Tripletts did not give Levan permission to drive the vehicle but sold it to him. After the sale they were not in a position to give permission. We disagree that the trial court's ruling negatively impacts the purpose of omnibus coverage.

¶ 28 The omnibus clause in the policy's liability section states that Auto Owners will provide coverage for damages for which Perfect Choice becomes legally responsible. Any legal responsibility on behalf of Perfect Choice or the Tripletts ended with the sale of the vehicle. To afford coverage in spite of the sale would extend the policy to cover drivers with no connection to either Perfect Choice or the Tripletts. Either Levan or Burkhardt caused the accident that injured Reeder and Hermann. Neither of them had a connection to Perfect Choice which would result in legal responsibility for their actions being placed on Perfect Choice. The lack of legal responsibility is further afforded Perfect Choice and the Tripletts under the Motor Vehicle Code,

which shields them from liability if they have complied with the statutory requirements upon the sale of a vehicle. See 625 ILCS 5/3-112(e) (West 2012). The Tripletts complied with the Code, which required them to sign the title over to Levan as the new owner and deliver it the title to him or to the Secretary of State. See 625 ILCS 5/3-112(a) (West 2012).

¶ 29 Interpreting the policy to extend coverage, as argued by Reeder and Hermann, would not be within the purpose of the insurance, which was to cover a work car used for Perfect Choice's business, as reflected in the employers' nonownership liability endorsement. Under the endorsement, coverage is limited to officers and partners of Perfect Choice while using the vehicle for business purposes. Neither Levan nor Burkhardt were Perfect Choice officers or partners and they were not using the Grand Prix for Perfect Choice's business. As the policy indicates, it was issued to cover a work vehicle that was principally used by Angela, the company's owner, for Perfect Choice business.

¶ 30 Reeder and Hermann maintain that the Grand Prix is excluded under the endorsement. They point to the exclusion provision in the endorsement that provides the endorsement does not apply to "any automobile covered by any other provision or extension of the policy" as support for their claim. As discussed above, the Grand Prix was not a vehicle covered under any other provision in the policy. The exclusion does not apply. We agree with the trial court that the employers' nonownership liability endorsement applies and precludes Levan or Burkhardt as covered drivers.

¶ 31 The trial court also considered that Perfect Choice had no insurable interest after the Tripletts sold the Grand Prix to the Levans. The trial court acknowledged that Illinois law does not directly address this issue and that the parties presented conflicting case law. In *Mid-States Insurance Co. v. Brandon*, 340 Ill. App. 470, 474-75 (1950), the reviewing court determined that

in liability insurance, an insured's right to recover is not based on his title or interest in the covered vehicle but on whether he is legally responsible for the loss. In *Patterson v. Durand Farmers Mutual Fire Insurance Co.*, 303 Ill. App. 128, 138 (1940), the reviewing court found that there was no coverage under a casualty policy issued to the wife of the titleholder of a house that burned down. The wife did not live in the house or on the property and had no homestead interest in it. *Id.* Because she had only a contingent right in the property, and thus lacked an insurable interest, the court found the policy was void as against public policy. *Id*.

¶ 32 In finding a lack of coverage, the trial court also relied on cases from foreign jurisdictions, which found no coverage on the basis of public policy. See *American States Insurance Co. v. Farmers Alliance Mutual Insurance Co.*, 20 P.3d 743, 758-59 (Kan. App. 2001) (insurer of seller, who sold vehicle earlier the day of buyer's accident, did not provide the buyer coverage after the sale of the vehicle was complete); *Smith v. Allstate Insurance Co.*, 584 N.W.2d 355, 358-59 (Mich. App. 1998) (seller's insurer not liable for coverage when the named insured sold the vehicle that was involved in an accident several hours later); *Progressive Northern Insurance Co. v. Consolidated Insurance Co.*, 673 N.E.2d 522, 526 (Ind. App. 1996) (summary judgment granted to insurer based on court's finding that the policy terminated when the vehicle was sold and transferred to the buyer); *Roach v. Georgia Farm Bureau Mutual Insurance Co.*, 325 S.E.2d 797, 799 (1984) (seller's insurable interest in truck terminated when he sold the truck).

¶ 33 Both Illinois cases support the trial court's findings. Although *Brandon* is distinguished in that the issue was the insured's right to recover, its finding that the insured was legally responsible for the loss afforded coverage, despite that the insured did not own the insured vehicle. In *Patterson*, also distinguished in that it was a casualty policy, the wife's contingent

interest in the property did not trigger coverage as her connection to any loss was speculative. Here, any insurable interest Perfect Choice and the Tripletts had in the Grand Prix ceased upon its sale to the Levans.

¶ 34 The other cases relied on by the trial court also support its determination that Perfect Choice and the Tripletts lacked an insurable interest in the Grand Prix after they sold it to the Levans. On the sale of the Grand Prix, the Tripletts entered into an agreement with the Levans providing the Levans were fully responsible for the vehicle, including immediate insurance coverage. Once the sale took place, all ties the Tripletts and Perfect Choice had with the Grand Prix were severed. Levan and Burkhardt were not officers or even employees of Perfect Choice, were not permissive users of the Grand Prix, and were not engaged in Perfect Choice business when the accident took place. Neither the Tripletts nor Perfect Choice had any responsibility for the accident. Any insurable interest the Tripletts' and Perfect Choice's had in the Grand Prix terminated on its sale. They were not legally responsible for any actions involving the vehicle.

¶ 35 The trial court did not err in granting summary judgment in favor of Auto Owners and denying Reeder and Hermann's cross-motion, who are not afforded coverage under the policy issued to Preferred Choice.

¶ 36 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.