[Cite as *Allstate Ins. Co. v. Croom*, 2011-Ohio-1697.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95508

ALLSTATE INSURANCE CO.

PLAINTIFF-APPELLEE

vs.

JIMMY CROOM

DEFENDANT-APPELLEE

APPEAL BY DENISE SCOTT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-701975

BEFORE: Cooney, J., Stewart, P.J., and E. Gallagher, J.

RELEASED AND JOURNALIZED: April 7, 2011

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Defendant-appellant, Denise Scott ("Scott"), individually and as the parent and natural guardian of Dwayne Scott, appeals the trial court's declaratory judgment holding that plaintiff-appellee, Allstate Insurance Company ("Allstate"), has no duty to defend or indemnify defendant Jimmy

Croom ("Croom") in an underlying lawsuit between Scott and Croom. We find no error and affirm the trial court's judgment.

{¶ 2} This declaratory judgment action arises from a dispute between a landlord and his tenant. Scott lived with her minor son Dwayne in a home she leased from Croom. Scott sued Croom for injuries Dwayne allegedly sustained as a result of exposure to lead in the house. Allstate was Croom's liability insurer and agreed to defend Croom in the lawsuit under a reservation of rights. However, because Allstate's policies exclude coverage for claims arising from exposure to lead, Allstate filed a complaint for declaratory judgment that commenced this action. Allstate named both Croom and Scott as defendants.

{¶ 3} Croom never filed an answer or otherwise defended himself. Allstate filed a motion for summary judgment, which Scott opposed. The trial court granted summary judgment in favor of Allstate and found that Allstate provided Croom with written notice of changes to his policy including an exclusion for injuries resulting from lead exposure. Accordingly, the trial court declared that Allstate has no duty to defend or indemnify Croom against Scott's personal injury claims. This appeal followed.

{¶ 4} In her sole assignment of error, Scott argues the trial court erred in granting summary judgment in favor of Allstate. She contends there are

genuine issues of material fact as to whether Allstate notified Croom of the lead exclusion.

{¶ 5} An appellate court reviews a trial court's decision on a motion for summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241. Summary judgment is appropriate when, construing the evidence most strongly in favor of the nonmoving party, (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.* (1998), 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201, citing *Horton v. Harwick Chem. Corp.* (1995), 73 Ohio St.3d 679, 653 N.E.2d 1196, paragraph three of the syllabus.

{¶ 6} It is undisputed that Croom's Comprehensive Personal Liability policy excluded coverage for any injury resulting from lead located at the residence. Scott contends that Allstate did not provide adequate notice to Croom of the lead exclusion when it was added to his policy and that this inadequate notice renders the exclusion unenforceable. We disagree.

{¶ 7} Insureds are entitled to assume that the terms of a renewal insurance policy are the same as the terms of their original policy unless they have notice to the contrary. An insurer's changes in coverage are invalid and unenforceable unless the insurer provides notice of the changes to its insured.

Smith v. Speakman, Franklin App. No. 08AP-211, 2008-Ohio-6610, citing *Kasakaitas v. Floering* (Mar. 20, 1992), Lucas App. No. L-91-209. Likewise, this court has held that "where there is a renewal of a policy without anything being said by the parties as to a change in its conditions, the agreement is implied that the new policy shall be upon the same terms and conditions as the former one." *Progress Properties, Inc. v. Reliance Ins. Co.* (Apr. 18, 1985), Cuyahoga App. No. 48992, quoting *J.R. Roberts & Son v. Natl. Ins. Co. of Cincinnati* (1914), 2 Ohio App. 463.

{¶ 8} Allstate submitted an affidavit from Linda Sisson, who works in Allstate's Customer Enterprise Services Department, in which she states that Croom's Allstate Comprehensive Liability policy first took effect on February 25, 1991, and renewed every year on the same date. Allstate first added the endorsement containing the lead exposure exclusion to Croom's policy when his policy renewed in February 1999 for the 1999-2000 policy year. Sisson further states that Allstate included this same exclusion in endorsements to all its Comprehensive Liability policies and that as policies came up for renewal, Allstate sent all of their insureds an "Important Notice" explaining the endorsement.

{¶ 9} At his deposition, Croom admitted that he probably received notices with his renewal policies but did not read them. He also admitted

that he would have no basis to dispute Allstate's contention that it mailed him notice of changes to his policy when it renewed his policy each year from 1999 to 2003. Thus, there is no evidence refuting Allstate's claim that it sent Croom written notice of the changes to his policy that added the lead exclusion.

{¶ 10} Scott argues that Croom's failure to read his renewal policies does not establish negligence on his part. She contends that without Croom's actual knowledge of the changes, the changes are unenforceable.

{¶ 11} Generally, failure to read an insurance policy defeats any right to reform that policy. *Allstate Ins. Co. v. George P. Zampedro* (Dec. 30, 1983), Trumbull App. No. 3247. There is an exception, however, if a renewal policy is issued. Id. The insured is not bound by new and more onerous provisions inserted in a renewal policy without his knowledge or consent. Id., citing *River Servs. Co. v. Hartford Acc. Indemn. Co.* (N.D.Ohio 1977), 449 F.Supp. 622.

{¶ 12} Knowledge may be imputed to the insured, if the notice was presented in such way as to call attention to any material change in the terms of the contract. Id. citing *River Servs.* The issuance of the policy alone, or instructions to carefully read the policy, does not constitute adequate notice. Id., citing *Thomas v. Connally* (1974), 43 Ohio Misc. 5, 332 N.E.2d 87.

However, notice is sufficient if it is provided in "a separately attached and clearly worded letter describing the modifications." Id., citing *Govt. Emps.' Ins. Co. v. United States* (C.A.1, 1968), 400 F.2d 172.

{¶ 13} In the instant case, Allstate provided a separately attached notice entitled "IMPORTANT NOTICE" that was written in bold capital letters in a larger font than the remainder of the notice. Beneath these words, it states: "Your Comprehensive Personal Liability Policy Has Been Revised." These words are also in a larger font than the text of the notice. The first line of the first paragraph states: "Please read this Important Notice and the enclosed endorsement carefully." The second paragraph explains in plain language: "The major changes to your policy by this endorsement are summarized below." One need only read as far as the third paragraph to reach a description of the lead exclusion, which reads:

{¶ 14} "The following are major changes to your policy

"Under 'Exclusions—Losses We Do Not Cover'

"We have revised exclusion 13 to state that we do not cover bodily injury which results in any manner from any type of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials, irritants, contaminants, or pollutants, including, but not limited to:

"— lead in any form[.]"

{¶ 15} This notice was sent to Croom as a separate piece of paper apart from the policy itself. It used bold type and capital letters to call his attention to the important changes described in the notice. The notice was just over one page long and was thus not overly burdensome to read. It mentions the lead exclusion five times. Furthermore, Croom does not dispute that he received the notice describing the lead exclusion. Under these circumstances, we agree with the trial court that Croom had notice of the lead exclusion. He never rejected the changes but continued paying the premiums for several years, thus indicating to Allstate that he consented to the changes. Therefore, the lead exclusion that was added to Croom's policy is enforceable and excludes Scott's claim for injuries her son sustained from exposure to lead inside Croom's property.

{¶ 16} Accordingly, the sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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COLLEEN CONWAY COONEY, JUDGE

MELODY J. STEWART, P.J., and
EILEEN A. GALLAGHER, J., CONCUR