

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JAMES M. CULLEN, III,)
) C.A. No. K10C-05-008 JTV
Plaintiff,)
)
v.)
)
MARK E. DUDLEY, and FARM)
FAMILY CASUALTY INSURANCE))
COMPANY,)
)
Defendant.)

MARK E. DUDLEY,)
) THIRD-PARTY COMPLAINT
Plaintiff,) and
) COMPLAINT FOR
v.) DECLARATORY JUDGMENT
) PURSUANT TO 10 *Del. C.*
FARM FAMILY CASUALTY) CHAPTER 65
INSURANCE COMPANY,)
)
Defendant.)

Submitted: October 22, 2012

Decided: January 29, 2013

Scott E. Chambers, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney
for Plaintiff Cullen.

Scott L. Silar, Esq, Margolis Edelstein, Wilmington, Delaware. Attorney for
Defendant Dudley.

Mary E. Sherlock, Esq., Weber, Gallagher, Simpson, Stapleton, Fires & Newby, Dover, Delaware. Attorney for Defendant Farm Family.

*Upon Consideration of Plaintiff's Request
For Declaratory Judgment*
**DECLARATORY JUDGMENT
AWARDED TO THIRD-PARTY DEFENDANT**

VAUGHN, President Judge

OPINION

The defendant/third-party plaintiff, Mark E. Dudley (“Dudley”), has filed a declaratory judgment claim in which he seeks a ruling that he is an insured under his grandparents’ umbrella insurance policy. The policy was issued by third-party defendant Farm Family Casualty Insurance Company (“Farm Family”). Dudley is a defendant in a claim asserted by the plaintiff, James Cullen, III (“Cullen”). Cullen alleges that he suffered personal injuries caused by negligence on the part of Dudley.

FACTS

On the night of January 29, 2010, Dudley drove Cullen and a few other individuals from his residence to a bar. They left the bar shortly after 1:00 a.m. Dudley testified that as he was driving the others back to his residence, a deer ran out in front of his vehicle, causing him to swerve and lose control of the vehicle. The vehicle rolled over and came to a rest with Cullen underneath it, causing serious personal injuries. Dudley later entered a plea of *nolo contendere* to Driving Under the Influence in the Court of Common Pleas.

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At the time of the accident, Dudley lived on a farm owned by his grandparents, Elwood and Sonja Carey (the “Careys”). He had lived there since February 2005 when he turned 18. The farm has a main dwelling, which is where the Careys lived. Dudley lived in a separate apartment located above a detached garage. The main house and the detached garage are about 20 feet apart. A concrete walkway extends from the base of the garage to the base of the house. The main house and the garage apartment share the same address, and there is only one mailbox located at the end of a single lane leading to the main road. The address for the Careys’ property is listed on Dudley’s driver’s license and voter registration card. The Careys previously have allowed other individuals, all of whom have been blood relatives, to live in the apartment above the garage before Dudley moved in. The Careys have also previously lived in the apartment, which was built by Elwood Carey’s in-laws, but moved to the main house in 1994.

The apartment that Dudley lives in has two bedrooms and one bathroom, and has its own washer, dryer, dishwasher, refrigerator, stove, and oven. Dudley does not have a room in the main house, and all of his personal property is located in the apartment. The apartment has its own separate telephone line and satellite dish, the bills for which are addressed directly to Dudley. There is also a separate electric meter for the apartment; but one electric bill is sent to the Careys, and Dudley pays for his share of the bill. Dudley does not pay rent to live in the apartment, but he works on the farm about 10 to 20 hours a week. Dudley does not get paid as an employee of the farm business.

STANDARD OF REVIEW

Delaware's Declaratory Judgment Act provides a means for securing judicial relief in an expeditious and comprehensive manner.¹ 10 *Del. C.* § 6502 states in pertinent part:

Any person interested under a . . . written contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status or other legal relations thereunder.

In determining whether a controversy is suitable for declaratory judgment, the Court must find that the following four elements have been met: (1) the controversy must involve a claim of right or other legal interest of the party seeking declaratory judgment; (2) the claim of right or other legal interest must be asserted against one who has an interest in contesting the claim; (3) the conflicting interests must be real and adverse; and (4) the issue must be ripe for judicial determination.²

Dudley and Farm Family both appear to agree that the above-mentioned elements are present and that the matter is properly before the court for declaratory judgment. The facts appear to be undisputed.

DISCUSSION

There are two issues in this case:³ (1) whether Dudley is an "insured" under the

¹ *Weiner v. Selective Way Ins. Co.*, 793 A.2d 434, 439 (Del. Super. 2002).

² *Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660, 662-63 (Del. 1973).

³ Dudley raised a third issue in his opening brief that there is no exclusion in the Farm Family umbrella policy that applies to deny coverage for the accident. This contention is not

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Careys' Farm Family umbrella policy; and (2) whether he has met the minimum primary insurance requirement as set out in the policy. For the reasons which follow, I find it necessary to address only the first issue.

The interpretation of insurance contracts is purely a determination of law.⁴ When interpreting an insurance policy, all pertinent provisions of the policy must be read together and not in isolation.⁵ Clear and unambiguous language in an insurance policy should be given its ordinary and usual meaning.⁶ A contract is not rendered ambiguous simply because the parties do not agree upon its proper construction.⁷ Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible to two or more different interpretations.⁸ Also, “[a]mbiguity does not exist where the court can determine the meaning of a contract ‘without any other guide than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends.’”⁹ If the language of the insurance policy is determined to be ambiguous, it will be construed against the

challenged by Farm Family in its answering brief, and it will not be addressed in this opinion.

⁴ *Hudson v. State Farm Mutual Ins. Co.*, 569 A.2d 1168, 1170 (Del. 1990).

⁵ *Keeseey v. Dombrowski*, 1994 WL 465541, at *3 (Del. Super. July 21, 1994) (citing *Grissom v. Nationwide Mut. Ins. Co.*, 599 A.2d 1086, 1088 (Del. Ch. 1991)).

⁶ *Johnston v. Tally Ho, Inc.*, 303 A.2d 677, 679 (Del. Super. 1973).

⁷ *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992).

⁸ *Id.*

⁹ *Id.* (quoting *Holland v. Hannan*, 456 A.2d 807, 815 (D.C. Cir. 1983)).

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drafter of the policy.¹⁰

Part I of the “Farm Umbrella Policy” sets forth the definitions of terms within the policy and defines “Insured” as “you, the individual, and the following residents of your household: 1) your spouse; 2) relatives of either;” It is undisputed that Dudley is a relative (*i.e.*, the grandson) of the policyholder, Elwood Carey, and his spouse, Sonja Carey. It is also undisputed that Dudley was a resident on the property. The only issue is whether Dudley is a resident of his grandparents’ household. This depends entirely on the meaning of the word “household.”

In *Engerbretsen v. Engerbretsen*,¹¹ the court concluded that the phrase “resident of the household” was unambiguous on its face, a conclusion with which I agree. In *Engerbretsen* the court also adopted the following definition of “household” which had been set forth in the case of *Amco Ins. Co. v. Norton*:¹² “those who dwell under the same roof and compose a family.”

I am satisfied that the definition of “household” adopted in *Engerbretsen* is the usual, ordinary, and commonly understood definition. Applying that definition to this case, I conclude that Dudley did not reside in his grandparents’ household. The main house and garage apartment were separate living units not under the same roof. The grandparents and Dudley each had their own household.

I am aware that there is authority that persons do not have to reside under the

¹⁰ *Steigler v. Ins. Co. of N. Am.*, 384 A.2d 398, 400 (Del. 1978).

¹¹ 675 A.2d 13 (Del Super. 1995).

¹² 500 N.W.2d 542 (Neb. 1993).

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same roof to be members of the same household. In *Mazilli v. Accident & Casualty Insurance Company of Winterthur, Switzerland*,¹³ for example, the Supreme Court of New Jersey held that a husband and wife who were separated and lived in separate houses on the same property made up one household. Notwithstanding such authority, I am persuaded that the conclusion that Dudley and his grandparents did not live in the same household is the proper conclusion in this case.

Therefore, judgment on Dudley's third-party complaint against Farm Family is awarded to Farm Family.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File

¹³ 170 A.2d 800 (N.J. 1961).