Court of Appeals of Michigan.

RANDOLPH v. STATE FARM FIRE CASUALTY COMPANY

Bessie RANDOLPH, Plaintiff-Appellee, v. STATE FARM FIRE & CASUALTY COMPANY, Defendant-Appellant.

Docket No. 199199.

-- March 27, 1998

Before FITZGERALD, P.J., and HOOD and SAWYER, JJ.

Steven A. Finegood, Flint, for Plaintiff-Appellee.Patrick, Johnson & King, P.C. by Paul H. Johnson, Jr., and David G. Stobb, Southfield, for Defendant-Appellant.

Plaintiff filed this action in order to recover under her insurance policy for losses and damages to her property, which resulted from a fire. The trial court denied defendant's motion for summary disposition. Defendant appeals by leave granted, and we reverse and remand.

The facts in this case are not in dispute. Defendant issued an insurance policy to plaintiff for accidental loss and damage to the property located at 641 E. Ridgeway, Flint, Michigan. On July 19, 1994, a fire occurred on the property. On July 21, 1994, defendant received notice of the loss and of plaintiff's intention to present a claim under the policy. On December 30, 1994, defendant denied liability under the policy.

On January 18, 1996, plaintiff filed this action to recover for the loss and damage sustained. In response, defendant filed a motion for summary disposition pursuant to the limitation term in its policy, which stated:

Suit Against Us. No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.

The trial court denied defendant's motion for summary disposition, ruling that this provision of the insurance policy was absolutely void because the policy lacked the tolling provision found in M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833(1)(q). The trial court applied a general six-year statute of limitations, M.C.L. § 600.5807(8); M.S.A. § 27A.5807(8). Defendant filed a motion for reconsideration and requested that the court read the required tolling provision, found in M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833 (1)(q), into the policy. The trial court denied the motion.

On appeal, defendant argues that the one-year, contractual statute of limitations contained in the policy was not contrary to M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833(1)(q) and therefore was not void pursuant to M.C.L. § 500.2860; M.S.A. § 24.12860. Alternatively, defendant argues that if the one-year limitation period is void, the tolling provision found in M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833(1)(q) should be constructively added to the policy.

A primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. Farrington v. Total Petroleum, Inc., 442 Mich. 201, 212, 501 N.W.2d 76 (1993). Statutory language should be construed reasonably, keeping in mind the purpose of the act. Barr v. Mount Brighton, Inc., 215 Mich.App. 512, 516, 546 N.W.2d 273 (1996). Insurance contracts are subject to statutory regulations, and mandatory, statutory provisions from the Insurance Code must be read into the contracts when applicable. Stine v. Continental Casualty Co., 419 Mich. 89, 104, 349 N.W.2d 127 (1984); Borman v. State Farm Fire & Casualty Co., 198 Mich.App. 675, 680, 499 N.W.2d 419 (1993), aff'd. 446 Mich. 482, 521 N.W.2d 266 (1994).

MCL 500.2860; M.S.A. § 24.12860 states:

Any provision of a fire insurance policy, which is contrary to the provisions of this chapter, shall be absolutely void, and an insurer issuing a fire insurance policy containing any such provision shall be liable to the insured under the policy in the same manner and to the same extent as if the provision were not contained in the policy.

MCL 500.2833(1)(q); M.S.A. § 24.12833(1)(q) states:

(1) Each fire insurance policy issued or delivered in this state shall contain the following provisions:

* * * * * *

(q) That an action under the policy may be commenced only after compliance with the policy requirements. An action must be commenced within 1 year after the loss or within the time period specified in the policy, whichever is longer. The time for commencing an action is tolled from the time the insured notifies the insurer of the loss until the insurer formally denies liability.

The use of the word "shall" in the statute indicates that it is mandatory that every insurance policy contain the provision. See Niggeling v. Dep't of Transportation, 183 Mich.App. 770, 775, 455 N.W.2d 415 (1990), citing Young v. Michigan, 171 Mich.App. 72, 429 N.W.2d 642 (1988).

We find that the one-year limitation period found in the insurance policy between plaintiff and defendant, which does not contain the tolling provision, is absolutely void pursuant to M.C.L. § 500.2860; M.S.A. § 24.12860. It is clearly contrary to the language of M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833(1)(q) cited above. The term in defendant's policy bars suit brought more than "one year after the date of loss or damage" regardless of the amount of time between the insured's notifying the insurer of the loss and the insurer's denial of liability.

Because the provision is void, the insurance contract does not contain any limitation period. It is necessary then to determine whether the limitation period of M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833(1)(q) should be read into the contract or whether a general six-year statute of limitations applies.

The tolling provision found in M.C.L. § 500.2833(l)(q); M.S.A. § 24.12833(l)(q) was added by 1990 PA 305, which also repealed the Michigan Standard Policy. The Michigan Standard Policy, contained in M.C.L. § 500.2832; M.S.A. § 24.12832, was a standard policy that all insurers were required to issue. Former section M.C.L. § 500.2832; M.S.A. § 24.12832, lines 157 to 161, stated:

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

The Supreme Court, in In re Certified Question, 413 Mich. 22, 38, 319 N.W.2d 320 (1982), interpreted M.C.L. § 500.2832; M.S.A. § 24.12832, lines 157-161, and held that although the twelve-month period commences from the date of loss, it is tolled from the time the insured provides notice of loss until the insurer formally denies liability.

A one-year period of limitation, with tolling, was mandatory under the old statute. A plain reading of M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833(1)(q) indicates that the Legislature intended to keep a mandatory limitation period of at least one year, with tolling, unless a longer period is specifically set forth in the insurance policy. In this case, where there is no applicable limitation period found within the policy, we will read the mandatory, statutory limitation provision into the insurance contract. See Stine, supra at 106, 349 N.W.2d 127. In so ruling, we note that there is absolutely no authority that would allow application of the general six-year contract statute of limitations to this insurance policy.

Under M.C.L. § 500.2833(1)(q); M.S.A. § 24.12833(1)(q), plaintiff had only one year after the time of loss, July 19, 1994, to file suit because a longer period was not specified in

the contract at issue. The time for commencing the action was tolled from the time the insured notified the insurer of the loss, July 21, 1994, until the insurer formally denied liability, December 30, 1994. As a result, plaintiff was required to file suit before December 28, 1995. Plaintiff's suit was filed on January 18, 1996, twenty-one days after the statutory period of limitation expired. Plaintiff's suit is barred, and summary disposition for defendant was proper.

Reversed and remanded for entry of an order consistent with this opinion.

PER CURIAM.