RENDERED: JULY 29, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001484-MR

RUSSELL LAWRENCE, BONNIE LAWRENCE and BONNIE LAWRENCE, Administrator of the Estate of ISAAC GORDAN LAWRENCE — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 02-CI-004466

GRANGE MUTUAL CASUALTY COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI AND MINTON, JUDGES; EMBERTON, SENIOR JUDGE.[1]

EMBERTON, SENIOR JUDGE: This is an appeal from a judgment denying appellants' request for a declaration that a commercial general liability policy issued by appellee, Grange Mutual

[1] Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Casualty Company, provided coverage for negligence which resulted in the tragic death of Isaac Lawrence. Finding no error in the well-reasoned analysis of the trial court, we affirm the judgment denying appellants' claim for coverage under the policy.

While playing in the backyard of property owned by Amy and Steve Grether, five-year-old Isaac Lawrence was electrocuted when he came in contact with a garage door upon which faulty electrical work had been performed. Isaac's parents subsequently brought a wrongful death action seeking recovery from A & A Garage, Inc., the company that contracted for construction of the garage; Brackney Electric, Inc., the subcontractor that performed the electrical work on the garage project; and Jonathan Brackney, the president of Brackney Electric. Jonathan Brackney was the master electrician on the project and was responsible for obtaining a permit for the electrical work from the City of Louisville.

Brackney Electric, Inc. and Jonathan Brackney were covered by Grange policy number CT2203263-03. Settlement was reached and payment made by Grange pursuant to that policy. The controversy centers on a second Grange policy, CT2250882, issued on February 12, 2002 and listing "John Brackney & Tony Fitz, d/b/a Cullup & Fitz Construction" as the named insured. After Grange denied coverage, appellants sought a declaration that the

latter policy extends to the actions of Brackney Electric and Jonathan Brackney, which are the subjects of the wrongful death litigation.

In its well-reasoned opinion, the trial court concluded that under the clear and unambiguous terms of the policy Grange agreed to insure the risk associated with a remodeling, drywall and painting business operated by Brackney and Fitz in partnership; and that to expand the scope of that coverage to include the electrical work performed by Brackney and Brackney Electric Grange would completely rewrite the parties' contract of insurance. We fully concur in that assessment.

In Meyers v. Kentucky Medical Insurance Company,[2] this Court made clear that courts are not free to rewrite parties' contracts of insurance under the "guise of interpretation or construction" but must define the parties' rights according to their agreed-upon terms. The policy at issue in the case before us clearly named "John Brackney & Tony Fitz, d/b/a Cullup & Fitz Construction" as the named insured and further provided that the business description of the insured entity was "remodeling, drywall, painting." In Section II(1)(b), the policy defines "insured" as follows:

[2] 982 S.W.2d 203 (Ky.App. 1997).

> If you are designated in the declarations as:
>
> b. A partnership or joint venture, you are an insured. Your members, your partners and the spouses are also insureds, but only with respect to the conduct of your business.[3]

The trial judge quite properly observed that it is the insured designation and business description that define the nature and extent of the risk the insurance company is undertaking.

The policy itself further limits the scope of coverage in Section II (4) which provides in pertinent part:

> No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

The purpose of this term is to preclude precisely the type of coverage expansion appellants are attempting to obtain in this case. In interpreting the scope of a policy, the Court must determine "the risk insured against" by the terms of the policy itself.[4] If an ambiguity as to those terms exists, courts are required to undertake an objective analysis of what an insured could reasonably expect under the policy.[5] Viewing the policy in that light, it is abundantly clear that Grange, in issuing a commercial general liability policy for a partnership in the

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[3] Emphasis added.

[4] Old Republic Insurance Company v. Begley, 314 S.W.2d 552 (Ky. 1958).

[5] Estate of Schwartz v. Metropolitan Property & Casualty Co., 949 S.W.2d 72 (Ky.App. 1997).

business of "remodeling, drywall, painting" did not undertake the risk associated with the operation of an electrical contracting firm, owned by a distinct legal entity and for which a separate commercial policy had been obtained based upon the risks associated with that enterprise.

Similarly, it is the contract of insurance that specifies the identity of the named insured, and in this case, the named insured is the partnership of Cullop & Fitz Construction. Brackney, as a member of that partnership, falls within the policy's definition of "insured" but only with respect to the conduct of that partnership's business. In this regard, we find instructive the analysis utilized by the California Court of Appeals in resolving the question of the scope of a partner's coverage under a similar contract of insurance:

> Lest there be any question about it, the policy specifically states that the named insured is a partnership. Thus, we conclude that it is the partnership which is the named insured. Milazo, as an individual, was not a named insured and was not provided coverage in his individual capacity. There was clearly no intent to do so and neither he nor the partnership could reasonably have expected otherwise.[6]

[6] Milazo v. Gulf Ins. Co., 224 Cal.App.3d 1528 (1990).

Appellants also insist that the term "business" as used in the declarations definition of "insured" is ambiguous and thus Bracken could reasonably expect that the policy would apply to his conduct of the business of Bracken Electric. Not only is such a contention at odds with other explicit policy language excluding the policy's application to the conduct of other past or current business ventures not listed as a named insured in the declarations, it would make the Cullop & Fitz policy almost limitless in its scope. Because we are convinced that the term "business" was clearly defined by the policy, Bracken could not reasonably expect it to apply to the conduct of other businesses.

Finally, contrary to appellants' assertion, we find no evidence in this record that the Cullop & Fitz partnership was so intertwined with Bracken Electric as to make them for all practical purposes a single entity. Nor is there evidence that Cullop & Fitz performed any work on the garage. So we fully agree with the trial judge that adoption of appellants' theory would completely rewrite the parties' insurance contract in violation of the clear dictates of Kentucky precedent. To do so would add a significant additional risk which was not within the contemplation of either party to the contract and was not calculated in the setting of the policy premium.

Appellants' reliance upon Hartford Accident & Indemnity Co. v. Huddleston,[7] is unpersuasive in that its focus is entitlement to uninsured motorists coverage, and unlike the situation here, the policy in that case did not require that the injury be related to partnership business. Johnson v. Service Merchandise Co.[8] involved a policy that specifically included another business in the "additional insureds" section, and thus entitlement to coverage was afforded by the plain language of the policy. Other cited authority is distinguishable either on the policy language or the facts, or is in conflict with established Kentucky precedent.

Finding no error in the decision of the Jefferson Circuit Court, its judgment is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

T. Wesley Faulkner
Kevin C. Burke
Louisville, Kentucky

BRIEF FOR APPELLEE:

Max S. Hartz
Owensboro, Kentucky

[7] 514 S.W.2d 676 (Ky. 1974).

[8] 327 F.Supp.2d 735 (2004).