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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002554-MR

WAYNE WILLIAMS

APPELLANT

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 03-CI-00080

FARMERS INSURANCE EXCHANGE

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, JOHNSON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Wayne Williams appeals from the decision of the Garrard Circuit Court in favor of Farmers Insurance Exchange on this declaratory judgment action to determine whether Williams' homeowner's insurance policy covered water damage to his house resulting from the rupture of a swimming pool liner. Williams contends that the rupture should be regarded as a covered event, and thus the exclusion for water damage in the policy should not apply. Farmers argues that since the cause of the rupture could

not be shown to be anything other than a failure in the material of the pool due to the weight of the water inside, the exclusion in the policy applies and no coverage exists. We agree that the policy applies to the facts in the way that Farmers suggests, and affirm the judgment.

The facts show that Williams had an above-ground pool at his home in Garrard County which for reasons unknown developed a tear in the lining, releasing the water in the pool. The water flowed toward the house and broke down the unmortared basement wall, causing a great deal of damage. Williams filed a claim under his policy with Farmers, which denied the claim under the "weight of water" exclusion. Williams filed this action seeking interpretation of the policy, arguing that the tear in the liner should be considered a covered event, and the damage to his house the natural consequence of that event. The circuit court found that Williams was unable to show that the cause of the tear in the liner was something other than the weight of the water, and so granted summary judgment, also dismissing a claim under the Unfair Claims Settlement Practices Act. This appeal followed.

Of particular importance to the outcome of this case is the cause of the tear in the liner. At first, it was suggested that lightning could have been the cause, and both parties agree that if lightning had caused the tear then the damage would be covered. Testing of the material revealed that

the damage was not consistent with a lightning strike. Williams speculates that the damage could have been caused by a fallen branch or an animal, but there is no proof in the record to support that speculation. In the absence of evidence that the tear resulted from an insured risk, the only conclusion left to the Circuit Court, in its view, was that the tear resulted from a failure of the material itself either due to a material defect or ordinary wear and tear, neither of which are risks covered by this policy. We must agree that the Circuit Court's reasoning was sound and see no reason to disturb it on appeal.

The cases cited by Williams, Franklin Packaging Company v. California Union Insurance Company, 408 A.2d 448 (1979), and Bartholomew v. Cameron County Mutual Insurance Company, 882 S.W.2d 173 (Mo. App. 1994) both involved acts of vandalism. Franklin Packaging involved a truck deliberately driven into a water-cooled air conditioner and Bartholomew involved an outside water spigot turned on by unknown persons while the homeowner was away on vacation. In each case, even though the policy contained an exclusion for water damage, coverage was found to exist because of the act of the vandal being the peril insured against. These cases, unfortunately for Williams, do not apply here because there is no evidence of an act or accident that could be the peril insured against. In spite of Williams' contention that the trial court admitted that the tear was a covered event, we interpret the court's ruling

differently. The court found that the pool was a "structure" for purposes of the policy, and if the pool had been damaged by a peril insured against, it would be a covered event.

Unfortunately for Williams, there is no evidence to support an argument that the pool was damaged by a peril insured against. Therefore, even though the pool was a structure for purposes of the policy, the leak was still not a covered event.

Contrary to Williams' assertion, this decision is consistent with the reasonable expectations doctrine. Williams testified that he requested his agent sell him "all the coverage he could get" under a homeowners' policy. Citing Nationwide Ins. Co. v. Warren, 675 S.W.2d 402 (1984), he argues that the water damage should have been covered under the 'all risk' policy as it was in that case. But Nationwide involved a covered event that led to the water damage - in that case, ice exerting weight on a gutter causing it to leak, leading ultimately to water flowing down the wall into the basement - and this case does not, as it involves the liner of a swimming pool failing on its own due to some flaw in the material. We must agree with Farmers' assessment of the body of case law on the subject that these cases are very fact-specific. There are many cases where a water damage exclusion was held not to apply, and there are many cases reaching the opposite result. See, McDonough v. Hardware Dealers Mutual Fire Ins. Co., 448 F.2d. 870 (1st. Cir. 1971) (water used in fighting fire held a natural

consequence of a fire, and thus covered); but see Bergeron v. State Fire & Casualty Co., 766 A.2d 256 (N.J. 2000)(failure of dammed pond due to defective design held not a covered event). The critical question, it seems to us, is whether a there was a reasonable expectation that an 'all risk' homeowner's policy would include flood insurance. In the absence of evidence that it is typical to include such coverage, the circuit court concluded that it was not, and we agree.

Similarly, the dismissal of Williams' action under the UCSPA must be affirmed. The evidence showed that the claim was denied after the cause of the damage was investigated and determined not to be covered. The UCSPA's requirement that the claim be denied without reasonable basis was not met here, and clearly it was not possible for Williams to prevail at trial on the claim. See Motorist Mutual Ins. Co. v. Glass, 996 S.W.2d 437 (Ky. 1997). Summary judgment was therefore proper.

For the foregoing reasons, the judgment of the Garrard Circuit Court is affirmed.

ALL CONCUR.

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