Bush v. Southern Financial Life Insurance Co.

2005 | Cited 0 times | Court of Appeals of Kentucky | February 25, 2005

NOT TO BE PUBLISHED

OPINION

AFFIRMING

Brenda Bush, individually and as administratrix of the estate of Glenn E. Bush, appeals from an order of the Carter Circuit Court granting summary judgment in favor of Southern Financial Life Insurance Company (Southern Financial) and Life of the South Service Company pursuant to CR 56.03. Brenda contends that the circuit court erred in granting summary judgment because there are genuine issues of material fact concerning whether Glenn misrepresented his health in his application for credit life insurance. We disagree and affirm the decision of the Carter Circuit Court.

On November 19, 1999, Glenn purchased a truck from McFarland Murray Chevrolet, Inc., in Grayson, Kentucky. Glenn financed the purchase through the First National Bank of Grayson. In connection with his purchase and financing of the vehicle, Glenn applied to purchase a credit life insurance policy from Southern Financial. A section of the application which was captioned "Statement of Debtor's Physical Condition" required Glenn to attest that he had not been "diagnosed, treated (including medication), consulted or received advice from a physician" for various listed physical conditions, illnesses, or ailments, including "a heart disease, condition or disorder," within the previous year. Glenn signed this section and submitted the application for approval.

With the application in hand, Southern Financial issued its credit life insurance policy which required Southern Financial to pay off Glenn's debt to First National Bank in the event of his death during the term of the policy. However, under the provisions of the policy, Southern Financial reserved the right to contest any claim filed within one year of the date on which the policy was issued. It was entitled to rescind the policy, refund the premiums paid, and deny the claim if, after investigation, it determined that the applicant had made a material misrepresentation in applying for the policy.

Glenn died of a myocardial infarction (heart attack) on June 5, 2000, approximately six months after the policy was issued. Brenda subsequently filed a claim for benefits under the policy. Following an investigation as permitted under the terms of the policy, Southern Financial determined that Glenn had misrepresented the condition of his health on his credit life insurance application and denied the claim.

On June 5, 2001, Brenda filed a complaint in Carter Circuit Court seeking a judgment for payment of the benefits due under the credit life insurance policy and asserting a claim pursuant to the Unfair Claims Settlement Practices Act.[2] On December 1, 2003, the circuit court entered an order granting summary judgment to the appellees. The court subsequently denied Brenda's motion to vacate the award of summary judgment. This appeal followed.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[3] It is axiomatic that "[t]he record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor."[4] On appeal, "[t]he standard of review ...ofa summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law."[5]

A policy of insurance is to be construed liberally in favor of the insured and if, from the language, there is doubt or uncertainty as to its meaning, and it is susceptible to two interpretations, one favorable to the insured and the other favorable to the insurer, the former will be adopted.[6] Under the doctrine of reasonable expectations, an insured is entitled to all the coverage he may reasonably expect to be provided according to the terms of the policy.[7] Unless the terms contained in an insurance policy have acquired a technical meaning in law, they "must be interpreted according to the usage of the average man and as they would be read and understood by him in the light of the prevailing rule that uncertainties and ambiguities must be resolved in favor of the insured."[8]

Under Kentucky law, a misrepresentation, omission, or incorrect statement on an application for an insurance policy will prevent recovery under the policy in three situations. First, there can be no recovery if the misrepresentation, omission, or incorrect statement is fraudulent. Second, there can be no recovery if the misrepresentation, omission, or incorrect statement is material to the acceptance of the risk or hazard assumed by the insurer. Third, there can be no recovery under the policy if the insurer in good faith either would not have issued the policy or contract, would not have issued it at the same premium rate, would not have issued it in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required by the policy application, contract or otherwise.[9] KRS 304.14-110 reflects a public policy requiring "those who apply for insurance [to] be honest and forthright in their representations."[10]

The first page of the application contained a section captioned "Statement of Debtor's Physical Condition," which stated in relevant part as follows:

1. In applying for life coverage, I (we) hereby represent that I (we) have not been diagnosed, treated (including medication), consulted or received advice from a physician within the past one (1) year for

any of the following: a heart disease, condition or disorder; cancer (excluding basal cell carcinoma); stroke; a condition of the liver or kidney; diabetes; respiratory illness, with the exception of bronchitis; drug or alcohol abuse; Acquired Immune Deficiency Syndrome (AIDS) or Aids Related Complex (ARC); or tested positive for HIV.

....

I (We) understand that the Company may void this certificate or deny a claim if, the Company finds at any time, even when a claim occurs, that I (we) have concealed or misrepresented any material fact in the application of proof of loss, or am (are) guilty of fraud, attempted fraud, or false swearing relating to any matter of this insurance.[11]

It is undisputed that Glenn suffered heart attacks in 1986 and 1994; that he was under a physician's care for coronary artery disease[12] during the 12 months preceding his application for the credit life policy; that he had appointments with a cardiologist on March 8, 1999, and on December 13, 1999; and that during the relevant period of time he was taking Dilacor and Scripten for coronary artery disease, as well as Lipitor and Colestid for hyperlipoproteinemia.[13] In addition, Brenda is a registered nurse who accompanied him during his appointments with his cardiologist.

Even viewed in the light most favorable to Brenda, however, we believe that no jury could reach a conclusion other than that Glenn misrepresented his health condition by signing the "Statement of Debtor's Physical Condition" section of the application. Clearly, a person who has had two heart attacks (albeit outside the one-year period dictated by the policy terms), who is actively consulting with a cardiologist, who is taking medication for coronary artery disease and high cholesterol, and who is married to a registered nurse, knows that he is being treated for a "heart disease, condition or disorder." Under the facts of this case, there are no genuine issues as to any material facts, and the appellees were entitled to summary judgment as a matter of law.

As we have concluded that the appellees were entitled to summary judgment on their claim of misrepresentation, we likewise conclude that they were entitled to summary judgment on the claim Brenda made pursuant to the Unfair Claims Settlement Practices Act.

For the foregoing reasons, we affirm the decision of the Carter Circuit Court.

HENRY, JUDGE, CONCURS.

MILLER, SENIOR JUDGE, DISSENTS AND FILES SEPARATE OPINION.

MILLER, SENIOR JUDGE, DISSENTING

Because I believe there are genuine issues of material fact in this action and that the appellant could

prevail in her claims in a trial before a jury, I respectfully dissent.

Initially, I observe: this policy was not a traditional life or medical insurance policy, but, rather, was a Credit Life Insurance Contract. Perforce, the focus was not on the applicant's health, but, rather, his credit worthiness in obtaining the bank loan. To the consuming public, this is a significant distinction.

On the merits, Southern Financial contends that Glenn misrepresented his health condition in his response to the section of the application captioned "Statement of Debtor's Physical Condition" because he suffered a heart attack in 1986 and in 1994; because he was under a physicians care for coronary artery disease during the 12 months preceding his application for the credit life policy; because he had appointments with Ashland-Bellefonte Hospital Cardiologist Dr. Charles M. Rhodes on March 8, 1999, and on December 13, 1999; and because he was taking four drugs during the relevant period of time: Dilacor and Scripten for coronary artery disease,[14] and Lipitor and Colestid for Hyperlipoproteinemia.[15]

Viewed in the light most favorable to the appellant, I believe that a jury could conclude that Glenn did not misrepresent his health condition by signing the "Statement of Debtor's Physical Condition" section of the application.

Most notably, viewed in the light most favorable to the appellant, the drugs Glenn was taking were not specifically for treatment of his heart, but, rather, were for the treatment of hardening of the arteries and elevated cholesterol. The application did not specifically require disclosure for these conditions; perforce a jury could conclude that a reasonable person would interpret the section as not requiring such disclosure. The December 13, 1999, visit to Dr. Rhodes occurred after the completion of the application and is irrelevant in this case.[16] Further, the heart attacks Glenn suffered in 1986 and 1994 were outside of the relevant time period and he need not have considered those events in completing the application.

With regard to the March 8, 1999, appointment with Dr. Rhodes, a jury could reasonably conclude that Glenn's visit on this occasion was for the purpose of his arterial and elevated cholesterol condition rather than for diagnosis, treatment, or advice concerning his heart.[17] The appellants do not provide a citation to confirmation that the visit was related to the latter, and as the evidence must be viewed in the light most favorable to the appellant, it must be presumed that it was not.

As the appellees were not entitled to summary judgment on their claim of misrepresentation, likewise, the appellees are not entitled to summary judgment on the claim pursuant to the Unfair Claims Settlement Practices Act. A jury could reasonably conclude that Southern Financial attempted to unreasonably characterize Glenn's medical condition as being related to heart disease, conditions, and disorders.

For the foregoing reasons, I believe the decision of the Carter Circuit Court should be reversed and remanded for trial.

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

2. KRS 304.12-220, et seq.

3. CR 56.03.

4. Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky. 1991).

5. Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).

6. St. Paul Fire & Marine Ins. Co. v. Powell-Walton-Milward, Inc., 870 S.W.2d 223, 227 (Ky. 1994).

7. Woodson v. Manhattan Life Ins. Co., 743 S.W.2d 835, 839 (Ky. 1987); Hendrix v. Fireman's Fund Ins. Co., 823 S.W.2d 937, 938 (Ky. App. 1991);

8. Fryman v. Pilot Life Insurance Co., 704 S.W.2d 205, 206 (Ky. 1986); Stone v. Kentucky Farm Bureau Mut. Ins. Co., 34 S.W.3d 809, 811 (Ky. App. 2000).

9. KRS 304.14-110; State Farm Mut. Auto. Ins. Co. v. Crouch, 706 S.W.2d 203 (Ky. App. 1986).

10. Crouch, 706 SW 2d at 207.

11. The policy also contained a provision under the "Life Insurance Benefit" section which stated as follows: SOUND HEALTH PROVISION: Death claims may be denied for conditions resulting from pre-existing illness, disease or physical condition for which the Insured Debtor received medical or surgical treatment, consultation or advice within the twelve (12) months preceding the effective date shown on the Schedule, and which would ordinarily be expected to materially affect the Insured Debtor's health during the period of coverage, however, after the coverage has been in force for six (6) months (twelve (12) months for contracts for more than three (3) years), this pre-existing clause shall not be valid.

12. "Coronary artery disease" is defined as "[n]arrowing of the coronary arteries sufficiently to prevent adequate blood supply to the myocardium." Taber's Cyclopedic Medical Dictionary 416 (16th ed. 1989). The myocardium is the middle layer of the walls of the heart. Id. at 1170.

13. The record shows that in Glenn's case, the diagnosis of hyperlipoproteinemia was essentially a diagnosis of elevated cholesterol.

14. In layman's terms, this diagnosis could be construed as a diagnosis of hardening of the arteries.

15. In Glenn's case, his diagnosis of Hyperlipoproteinemia was essentially a diagnosis of elevated cholesterol.

16. The application did not require an applicant to provide updates based upon subsequent events.

17. We note that any annual physical check-up will involve, at minimum, a review of the patient's heart by stethoscope with attendant routine comments by the physician. We do not construe the application to require disclosure of same, as such a broad interpretation would serve to permit the appellee to disqualify the majority of claimants as having made a misrepresentation on the application.