PRUDENCE MUTUAL CASUALTY COMPANY v. CHARLES B. GRIMM

233 So. 2d 664 (1970) | Cited 0 times | District Court of Appeal of Florida | March 13, 1970

WALDEN, Judge.

Charles B. Grimm sued Prudence Mutual Casualty Company because of the company's refusal to pay proceeds of a non valued insurance contract which covered theft of Grimm's automobile. The case was tried to a jury and resulted in a verdict for Grimm in the sum of $1800.00 and judgment in that sum, plus $1200.00 in attorney's fees and plus costs. The company appeals. We reverse.

There is no dispute as to the dispositive material facts. From them we say, as a matter of law, that Grimm did not have an insurable interest in the vehicle at the time of the alleged theft.

Section 627.01041, F.S.1967, F.S.A., provides:

"(1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

"(2) 'Insurable interest' as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

"(3) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof."

At the time of the alleged theft:

(1) Grimm did not have legal title to the vehicle;

(2) A bank held a lien which exceeded the value of the car as even acknowledged by Grimm;

(3) Grimm had agreed to voluntarily surrender possession to the bank without charge or consideration;

(4) Grimm was holding the car for the bank who was to repossess it within the next day or so;

(5) A police officer to whom Grimm had reported the theft testified that Grimm stated he did not

want the car bank nor to be responsible for it;

(6) Grimm had sued the person who had purported to sell the vehicle to him, asking either for delivery of title or a refund of the sum of $1500.00 which Grimm had paid and Grimm thereby obtained judgment for the sum of $1500.00.

It is clear to us from the record that at the time of the alleged loss Grimm possessed neither legal or equitable title to the vehicle; had no insurable interest; and suffered no economic loss. In other words, he did not meet the criteria announced in Section 627.01041(2), F.S.1967, F.S.A. The most that Grimm could be said to have would be a naked custody which he had already agreed to surrender without consideration.

An insurable interest in property is not held by a person who has no legal title or equitable interest and has merely custody of the automobile awaiting the immediate exercise of another's right of possession. Section 627.01041, F.S.1967, F.S.A.; Peninsular Fire Insurance Co. v. Fowler, Fla.App.1964, 166 So.2d 206.

Furthermore, the extent of recovery allowed under a "nonvalued" insurance policy covering theft of property is the value of the insured's actual loss. When, as in the instant case, no loss is sustained there may be no recovery. 44 Am.Jur.2d, Insurance, §§ 1647, 1648; 15 Couch on Insurance 2d, § 54.168; Lighting Fixture Supply Co., Inc. v. Fidelity Union Fire Ins. Co., 5 Cir. 1932, 55 F.2d 110. Therefore, it was also error for the court to instruct the jury that the appellee could recover the fair market value of the property at the time of the loss.

In support of the judgment the appellee cites Smith v. State Farm Mutual Automobile Insurance Company, Fla.App.1969, 220 So.2d 389; and Skaff v. United States Fidelity & Guaranty Company, Fla.App.1968, 215 So.2d 35. Both of these cases held that bona fide purchasers of stolen cars nevertheless had an insurable interest in them. These cases can be distinguished from the instant case in that in each case the insured had an equitable interest in the car because of the money he had paid and each had a Florida title certificate to the car. The appellee had no Florida title certificate to the car. In addition, although he paid a part of the purchase price ($1500.00), he had already received a judgment for this amount against the seller before the alleged theft. Thus the appellee did not even have an equitable interest in the vehicle but only custody of it until the time he was to turn it over to the bank.

For the above reasons we reverse and remand with instructions to enter judgment in favor of the defendant, Prudence Mutual Casualty Company.

Reversed and remanded.

OWEN, J., concurs.

CROSS, C.J., dissents, with opinion.

CROSS, Chief Judge (dissenting).

I must respectfully dissent.

At best, the decision of the majority compounds confusion in a field already replete with complexities. The business of insurance is at the very nucleus of our modern commercial economy, and because the general public is a gigantic daily consumer of the insurance product, the legal requirement of insurable interest, the absence of which permits the insurer's escape from contractual liability, must be constantly revaluated for utility and correspondence to social and economic practices and expectations.

The Florida Legislature in Section 627.01041(2), Florida Statutes, F.S.A., has endeavored to guide us in what it has determined to be an insurable interest. In interpreting the words "insurable interest" as found in the statute, it is most helpful to define the words individually and then apply them together. Insurance is a contract whereby one party is obligated to confer benefits of a pecuniary value upon another party dependent upon the happening of a fortuitous event in which the insured or beneficiary has or is expected to have at the time of such happening a material interest which will be adversely affected by the happening of such event. The word "interest" has been traditionally defined in the terms of rights in the insured property. It of course may also be characterized as such relationship to property as makes a happening adversely affecting the insured property as an economic disadvantage to the interest holder. Insurable interest is that kind of interest in the property insured which the claimant must show in order to have a legally enforceable claim to recovery.

Ownership of all or part of the insured property, whether denominated legal ownership or equitable ownership, has been regarded by the courts as sufficient to constitute an insurable interest. However, ownership of a physical allocation of property is not strictly necessary to come within the property right concept. In the nature of our modern commercial economy, courts have recognized that judgment creditors have insurable interests. First National Bank of Charleroi v. Newark Fire Insurance Co., 1935, 118 Pa.Super. 582, 180 A. 163.

The majority tries to strengthen its position that Grimm did not as a matter of law have an insurable interest in the vehicle at the time of the theft on the basis that Grimm had sued the person who had purported to sell the vehicle to him, asking either delivery of the title or a refund of the sum of $1500 which Grimm had paid, and that Grimm obtained judgment for the sum of $1500. I fail to perceive how the attainment of a judgment would eliminate Grimm's having an insurable interest in the property. On the contrary, to me it would strengthen the fact that Grimm did have an insurable interest as a judgment creditor. If the judgment were satisfied, which it was not, then Grimm's interest would dissipate. Certainly it cannot be argued with logic that the recovery of a judgment is

equivalent to satisfaction. Hilbert v. Roth (Pa.) 1965, 26 Leh.L.J. 45. The judgment creditor too often finds himself with merely a legal document, which cannot be satisfied and has a value which is akin to yesterday's newspaper.

The jury in the instant case determined that Grimm had an insurable interest in the property. The facts revealed that Grimm agreed to pay $2500 for the automobile, and in fact, did pay $1500 of that amount and received a bill of sale for the automobile. At the time he obtained the insurance, Mr. Grimm had invested $1500 in the automobile and owed an additional $1000 to the seller. At the time the automobile was stolen it had a market value of $2500. Grimm's investment of $1500 gave him an insurable interest in the vehicle at the time of the theft notwithstanding his "paper judgment."

Men who are unlearned in the law regard their insurance policy as an instrument of security. It certainly is a grievous sociological error on the part of the majority to allow this insurance company's obligation to flake away mysteriously. By doing so, a lack of perception is shown of property right concepts in insurable interest, since really an insurable interest implies merely a relationship to a property unit that will lead to economic disadvantage if the property unit is impaired. The insurance carrier serves a valuable function in society: that of shifting economic risks. Its service as an indemnitor should extend to the plaintiff herein who possessed the necessary economic relationship to the property and was confronted with loss by the fortuitous event.

I would affirm the judgment of the trial court.