Acuity, A Mut. Ins. Co. v. Progressive Specialty Ins. Co.

2023-Ohio-3780 (2023) | Cited 0 times | Ohio Supreme Court | October 19, 2023

SLIP OPINION NO. 2023-OHIO-3780 ACUITY, A MUTUAL INSURANCE COMPANY, APPELLEE, v. PROGRESSIVE SPECIALTY INSURANCE COMPANY, APPELLANT. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as Acuity, A Mut. Ins. Co. v. Progressive Specialty Ins. Co., Slip Opinion No. 2023-Ohio-3780.] Contracts Loss plain language of Court

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(No. 2022-0863 Submitted April 19, 2023 Decided October 19, 2022.) APPEAL from the Court of Appeals for Portage County, No. 2021-P-0001, 2022-Ohio-1816. _____ DEWINE, J. {¶ 1} was insured by Acuity. insured by Progressive Specialty

Insurance Company. The question is which insurer is on the hook for the accident? {¶ 2} Insurance policies are contracts, so the answer comes down to contract interpretation. Under the plain language of the Progressive policy, Smith covered under the plain language of the Acuity policy. Thus, we conclude that

Acuity must provide coverage for the accident in question. The Eleventh District Court of Appeals took a different view, so we reverse its judgment. I. Background A. A Car Crash and Two Insurance Policies {¶ 3} Smith drove a car off the road, injuring his three passengers and damaging a utility pole. car that is, he had been given permission to drive the car by . {¶ 4} Smith automobile-insurance policy with Acuity, which listed Smith as a driver. The owners of the car Smith was driving insured it through Progressive. Both policies had the same liability limits: $100,000 per person and $300,000 per accident. {¶ 5} Acuity filed a declaratory-judgment action, claiming that Progressive should pay for damages resulting from the crash. Acuity asserted that its policy that because the policy limits of both policies were the same, no excess coverage was available. Progressive countered that because Smith was insured under Acuity policy, Smith policy for purposes of the accident and, therefore, Progressive responsible for coverage. {¶ 6} The relevant provision in the Progressive policy is found under the insured person The definition excludes any person who drives a car covered by the policy but who is insured by another liability policy:

1. * * * b. any person who is not insured for liability coverage by any other insurance policy * * * with respect to an accident arising out relative, or a rated resident.

excess , which provided that insurance ther than a covered auto, will be excess over any other collectible insurance {¶ 7} On the other hand, the Acuity policy defined insured person to [y]ou or a relative while using a car * * * other than your insured car with excess-insurance clause, which provided:

If there is other applicable auto insurance on a loss covered by this Part, we will pay our proportionate share as our limits of liability bear to the total of all applicable liability limits. But, insurance afforded under this Part for a vehicle you do not own is excess over any other collectible auto liability insurance.

(Emphasis supplied.) B. The Proceedings Below {¶ 8} Both Progressive and Acuity filed motions for summary judgement. The trial court applied the plain language of the two policies and found Acuity responsible for providing liability coverage. It explained that the excess-insurance applies only when other applicable auto liability insurance is available. And because Smith does not fall within the definition of was available with respect to Smith. {¶ 9} Acuity appealed to the Eleventh District, which reversed the trial 2022-Ohio-1816, ¶ 5. It held that escape clause id. at ¶ 39, and that under

State Farm Mut. Auto. Ins. Co. v. Home Indemn. Ins. Co., 23 Ohio St.2d 45, 261 N.E.2d 128 (1970), the provision was unenforceable. 2022-Ohio-1816 at ¶ 3. It competing excess-insurance clauses. Id. at ¶ 4. The court held that in such a

situation, both insurers were responsible for providing coverage, with each insurer liable in proportion to the amount of insurance provided by its own policy. Id. {¶ 10} raises two propositions of law. The first asserts that insurers are permitted to contractually define who is covered under a liability-insurance policy. The second postulates that when a permissive driver because liability coverage is not triggered for the permissive user See 167 Ohio St.3d

1525, 2022-Ohio-3322, 195 N.E.3d 157. II. Analysis {¶ 11} Insurance policies are contracts. And when we interpret contracts, we must take their language seriously. Indeed, both the United States and the Ohio ing the obligation of Ohio Constitution, Article II, Section 28; U.S. Constitution, Article I, Section 10. Hybud Equip. v. Sphere Drake Ins. Co. Ltd., 64 Ohio St.3d 657, 665, 597 N.E.2d 1096 (1992); see also Sharonville v. Am. Emps. Ins. Co., 109 Ohio St.3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶ 6. That means that for an insurance

language its ordinary meaning and to refrain from rewriting the contractual agreement of the parties. Miller v. Marrocco, 28 Ohio St.3d 438, 439, 504 N.E.2d 67 (1986). {¶ 12} So, we start with the plain language of the two policies. A. Under a plain-language reading, Progressive prevails {¶ 13} If plain meaning is the standard, this is an easy case. Under the terms of the Progressive policy, . permissive

user of a covered automobile only

liability coverage by any othe Because Smith is insured under

Progressive policy. {¶ 14} Smith does qualify as an insured person under the Acuity policy. The policy defines insured person to include a relative of the policyholder, such as Smith, who is * * other than [his] permission to do so. The excess insurance provision in that policy applies only is other applicable auto liabi insured driver under the Progressive policy, there is no other applicable liability

insurance. Thus, under the plain language of the contracts at issue, Acuity is responsible for providing liability coverage to Smith for the accident. {¶ 15} Acuity that under a plain-language reading of both policies, it would be responsible for providing coverage. Instead, it argues that this State Farm, 23 Ohio St.2d 45, 26 N.E.2d 128, a view shared by the court of appeals. So, . B. State Farm is distinguishable {¶ 16} Like the case at bar, State Farm involved a permissive user who caused a car accident. See State Farm at 45. State Farm insured the permissive user, and its policy included a provision that the court identified as an excess- insurance clause, id. at 46. Home Indemnity Insurance Company insured the owner, and its policy included what this court identified as an escape clause. Id. {¶ 17} -insurance clause provided that the insurance with respect to a temporary substitute automobile * * * shall be excess over other collectible insurance. Id. escape clause provided that only if no other valid and collectible automobile liability insurance, either primary or excess * * * is available to such person. Id. {¶ 18} This court Id at 47. Thus, the

problem as identified by the State Farm court policy [were] given full effect without reference to the other, neither policy would

Id at 46. escape clause would absolve it of any liability, excess clause would not apply because there was no other insurance for which State Farm insurance would be in excess. {¶ 19} The State Farm court solved this problem through a creative interpretation of the Home Indemnity escape clause. The court held that it would as if it read if either no other valid and collectible primary automobile insurance or no other

valid and collectible excess automobile insurance is available to the insured. (Emphasis supplied.) Id. at 47-48. 1 By reading the policy in this manner, the court found that because there was no other primary insurance available, the escape clause was insufficient to prevent liability from attaching to the insurer who Id. at 48. {¶ 20} Our case is different from State Farm holding in State Farm was the concern that if the court Id. at 46. This was true even

it not for the other insurance language contained in each. Id.

{¶ 21} The policy language in our case is different from the language in State Farm. And unlike in State Farm, giving effect to the plain terms of the policy coverage does not create the anomalous

circumstance in which an insured who could have obtained coverage under either policy (but for the other) has coverage available under neither. To the contrary, applying the straightforward language of company, Acuity, must cover the loss. Thus, whatever the wisdom of the State

Farm decision, its holding does not control the outcome of the present dispute. See Arbino v. Johnson & Johnson, 116 Ohio St.3d 468, 2007 Ohio 6948, 880 N.E.2d 420, ¶ 23, quoting Rocky River v. State Emp. Relations Bd., 43 Ohio St.3d 1, 5, 539 N.E.2d 103 (1989) where the facts of a subsequent case are substantially the same as a former case .

1. Of course, this was far from the obvious reading of the provision. See Scalia & Garner, Reading Law: The Interpretation of Legal Texts 119 (2012) ( ). or and (Emphasis sic.) Id. Thus, the more natural reading of the escape clause would have been that a permissive driver must prove that he did not have primary liability insurance and that he did not have excess liability insurance before being eligible for coverage. C. We apply a plain reading of the insurance policies at issue {¶ 22} This case boils down to a fairly simple question: Do we apply the plain language of the insurance policies, or do we extend the State Farm decision to encompass the facts of the present dispute? {¶ 23} Acuity would like us to read into the State Farm case a broad rule that [i]n a dispute between insurers over allocation of automobile liability . {¶ 24} Our duty when interpreting a contract is to give effect to the terms to which the parties have agreed. Where two insurance policies exist, and where under the plain and natural reading of both policies, one policy provides coverage and the other does not, we must honor the province to rewrite contracts to create judicially preferred outcomes. {¶ 25} Indeed, in other types of automobile-insurance cases, we have not hesitated to apply the plain meaning of policy language by which an insurer limits coverage through its definition of insured person. In Holliman v. Allstate Ins. Co. Corp. in a crash caused by an uninsured motorist. 86 Ohio St.3d 414, 415, 715 N.E.2d 532 (1999). After recovering the policy limit from the car uninsured-motorist policy, they insurance policy. Id. only the policy holder and Id. at 416. Because the

plaintiffs decedents were friends of the policyholder, not relatives, the insurer denied coverage. Id. We upheld this result, explaining that the provision was not in contravention of the uninsured-motorist statute and that therefore of whether the umbrella policy provided coverage to plaintiffs decedents must be determined according to the rules that govern the construction of written contracts Id. at 417. {¶ 26} Acuity says that Holliman is different because it dealt with uninsured-motorist coverage. But we are hard pressed to see why that distinction matters. The take-away from Holliman is that absent a statutory prohibition to the contrary, parties are free to reach their own agreement about who is an insured under an insurance policy. The same goes for this case. {¶ 27} Acuity and suggests that it reflects the traditional principle -policy reason that would militate for assigning

liability to one insurer over the other in this case, particularly in the face of unambiguous policy language. But even if we did, public policy is not our role. {¶ 28} Insurance is among the most highly regulated areas of the law. See R.C. Title 39. The General Assembly has enacted a comprehensive

statutory scheme related to the provision of motor-vehicle insurance in Ohio. See R.C. Chapter 3937. Insurers are required to file with the Ohio Department of Insurance And the filed coverage forms are subject to comment and rejection by the Superintendent of the Department of Insurance. See R.C. 3937.04. Against this backdrop, we will leave the policymaking to the executive and legislative branches. {¶ 29} Where two insurance policies potentially cover the same loss and a plain reading of the language of both policies establishes that one of the policies provides coverage, we will give effect to that plain language. The holding in State Farm is limited to the facts that gave rise to that case. III. Conclusion {¶ 30} We apply the same rules for the interpretation of insurance contracts as any other contracts. Under the plain language of the policies at issue, Acuity is responsible for providing coverage. We reverse the contrary judgment of the Eleventh District Court of Appeals. Judgment reversed. KENNEDY, C.J., and FISCHER, STEWART, and DETERS, JJ., concur. BRUNNER, J., dissents, with an opinion joined by DONNELLY, J. _____ BRUNNER, J., dissenting. {¶ 31} This case involves an automobile accident and potential coverage under two insurance policies. We are asked to determine which policy covers the losses when one policy covers the permissive driver and another policy covers the borrowed vehicle. We previously have answered this question in different contexts and in different factual scenarios involving dueling insurance policies. See State Farm Mut. Auto. Ins. Co. v. Home lndemn. Ins. Co., 23 Ohio St.2d 45, 261 N.E.2d 128 (1970); Buckeye Union Ins. Co. v. State Auto. Mut. Ins. Co., 49 Ohio St.2d 213, 361 N.E.2d 1052 (1977). This case presents neither a novel question nor an issue of public or great general interest. See Ohio Constitution, Article IV, Section 2(B)(2)(e); S.Ct.Prac.R. 7.08(B)(4)(b). Nor does it involve a substantial constitutional question. See Ohio Constitution, Article IV, Section 2(B)(2)(a)(ii); S.Ct.Prac.R. 7.08(B)(4)(a). Rather, all we must do to resolve this case is to apply well-established principles of contract interpretation, see majority opinion, ¶ 11, and in the spirit of pure error correction, the majority reaches a conclusion different from the one reached by the Eleventh District Court of Appeals. is not a valid reason for this court to accept jurisdictio State v. Barnes, __ Ohio St.3d __, 2022-Ohio-4486, __ N.E.3d __, ¶ 48 (Fischer, J., dissenting). {¶ 32} The more we engage in error correction, the less time and attention we can devote to issues that can be resolved only by this court. See Ohio Constitution, Article IV, Section 2 (establishing the wide-ranging areas of this this state, we should focus on preventing errors through judicial education rather

than correcting them by exercising our discretionary jurisdiction. See Ohio Constitution, Article IV, Section 5(A)(1); Gov.Jud.R. V. We should not have accepted this appeal; I previously voted not to accept it, 167 Ohio St.3d 1525, 2022- Ohio-3322, 195 N.E.3d 157, and emphasize that vote now in dissenting from the majority opinion. {¶ 33} Since this court is substantively reviewing the case, I point out that -language analysis does not work. The majority explains that Ashton Smith does not satisfy the definit

appellee Acuity, A Mutual Insurance Company. Majority opinion at ¶ 13. But a Smith is, in fact, insured under it. This is because Smith was driving a borrowed automobile not

any other accident. The majority opinion fails to reach the heart of the controversy by failing

to consider this distinction. {¶ 34} A plain-language reading of the dueling policy language at issue calls for applying the State Farm and Buckeye Union analyses that is, the application of already established law. This is error correction, void of any novel issue of law. The Eleventh District applied our precedent and made the required, careful analysis of the contract language at issue. Our review is unwarranted and unnecessary. Worse, error-correction analysis that ignores facts that are necessary for a full legal analysis creates bad law. {¶ 35} cases that are of public or great general interest in order to best serve the public and

appropriately supervise the courts of this state. See Ohio Constitution, Article IV, Sections 2(B)(2)(e) and 5(A)(1). Because we do not accomplish this in issuing the majority opinion in this case, I respectfully dissent and suggest that this case should be dismissed as having been improvidently accepted. DONNELLY, J., concurs in the foregoing opinion. _____ Hanna, Campbell & Powell, L.L.P., Kenneth A Calderone, Douglas G. Leak, and John R. Chlysta, for appellee. Collins, Roche, Utley & Garner, L.L.C., David L. Lester, and David G. Utley, for appellant. Western Reserve Group and David L. Jarrett, urging reversal for amicus curiae, Western Reserve Group.

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