



**STATE FARM FIRE AND CASUALTY COMPANY, Plaintiff and Respondent, v.
KAREN LEWIS, Defendant and Appellant**

No. C000114

Court of Appeal of California, Third Appellate District

191 Cal. App. 3d 960; 236 Cal. Rptr. 807; 1987 Cal. App. LEXIS 1696

May 6, 1987

SUBSEQUENT HISTORY: [***1] A petition for a rehearing was denied June 2, 1987.

PRIOR HISTORY: Superior Court of Sacramento County, No. 314609, Benjamin Diaz, Judge.

DISPOSITION: The judgment is affirmed.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court entered judgment declaring that an insurer had no duty under a homeowner's insurance policy to defend or indemnify the estate of its deceased insured against claims for injuries sustained by the insured's wife or for the wrongful deaths of the insured's two children. The insured shot and killed the two children, assaulted the wife, causing her bodily injury, and later killed himself. At the time of the killings, the wife and children were residing with the insured. The wife filed an action against the insured's estate for her injuries and for her children's wrongful deaths. (Superior Court of Sacramento County, No. 314609, Benjamin Diaz, Judge.)

The Court of Appeal affirmed the judgment. It held that the homeowner's policy unambiguously excluded from coverage the damages sought by the wife in her action since the policy excluded coverage for bodily injury to any insured, and the policy definition of

"insured" included "relatives of the insured who are residents of the insured's household." It further held that since the policy defined "bodily injury" as including bodily harm and death resulting from bodily harm, the insurer had no obligation to defend or indemnify the wife for damages resulting from bodily injury to her or to the children, or because of the children's deaths. (Opinion by Sims, J., with Puglia, P. J., and Sparks, J., concurring.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) Insurance Contracts and Coverage § 11 -- Interpretation as Question of Law. -- The interpretation of an insurance policy, like any other contract, is a matter of law as to which a reviewing court must make its own determination.

(2) Insurance Contracts and Coverage § 15 -- Interpretation Against Insurer -- Ambiguities. -- It is a basic principal of insurance contract interpretation that doubts, uncertainties and ambiguities arising out of policy language should be resolved in favor of the insured in order to protect his reasonable expectation of coverage. This rule of construction is applicable only when the policy language is found to be unclear.

(3) Insurance Contracts and Coverage § 17 -- Rules in Aid of Interpretation -- Reasonable and Ordinary

Meaning of Words. -- An insurance policy provision is ambiguous when it is capable of two or more constructions, both of which are reasonable. Whether the language in a contract is ambiguous is a question of law. Words in an insurance policy must be read in their ordinary sense, and any ambiguity cannot be based on a strained interpretation of policy language.

(4) Insurance Contracts and Coverage § 90 -- Coverage of Contracts -- Homeowner's Insurance -- Persons Insured -- Members of Household. -- In a declaratory judgment action by an insurer against the wife of an insured who sought damages for injuries sustained by the wife and for the wrongful deaths of her two children resulting from an attack by the insured, the insured's homeowner's insurance policy unambiguously excluded from coverage the damages sought by the wife. The policy excluded coverage for bodily injury to any insured, and the definition of "insured" included "relative of the insured who are residents of the insured's household." At the time of the attacks, the wife and the children were residing with the insured. Furthermore, the policy defined "bodily injury" as including bodily harm and death resulting from bodily harm; consequently, the insurer had no obligation to defend or indemnify the wife for damages resulting from bodily injury to her or to the children, or because of the children's deaths.

COUNSEL: Friedman, Collard, Poswall & Virga, John M. Poswall and Georgann B. Johnston for Defendant and Appellant.

Matheny, Poidmore & Sears, Douglas A. Sears and Michael A. Bishop for Plaintiff and Respondent.

JUDGES: Opinion by Sims, J., with Puglia, P. J., and Sparks, J., concurring.

OPINION BY: SIMS

OPINION

[*962] [**807] Defendant Karen Lewis (Karen) appeals from a judgment declaring that plaintiff State Farm Fire and Casualty Company (State [**808] Farm) has no duty under a homeowner's insurance policy to defend or indemnify the estate of her late husband, Wesley Lewis (Wesley), either for injuries Karen sustained or for the wrongful deaths of the Lewis's two minor children.

On appeal Karen concedes the policy excludes coverage for her own physical bodily injuries.¹ She contends, however, that the policy's exclusionary clause does not unambiguously exclude coverage for her children's wrongful deaths because, as is generally understood, a cause of action for "wrongful death" is not a cause of action [***2] for "bodily injury." She urges that the policy be construed in her favor as not excluding coverage for wrongful death.

¹ At oral argument, Karen suggested she might have suffered some specie of bodily injury other than "physical" bodily injury. We need not dwell on that assertion, since, as we shall explain, all damages for bodily injury otherwise covered by the policy are excluded from coverage when suffered by Karen.

We conclude the policy unambiguously fails to insure against the damages sought by Karen and therefore affirm the judgment.

Facts and Procedural Background

The factual predicate to this case is concededly tragic.

Wesley shot and killed the two minor children of the marriage who resided with Karen and him. Wesley later attacked Karen with a pipe, causing her bodily injury. Wesley thereafter took his own life.

Karen filed an action against Wesley's estate for her own injuries and for her children's wrongful deaths. At the time of the killings, Wesley was insured by a homeowners' insurance [***3] policy issued by State Farm.²

² The record does not indicate the status of Karen's action. That action is not presently before us.

The policy provided in pertinent part: "Coverage L -- Personal Liability [para.] If a claim is made or suit is brought against any insured for damages because of bodily injury or property damage to which this coverage applies, we will: [para.] a. pay up to our limit of liability for the damages for which the insured is legally liable; and [para.] b. provide a defense at our expense by counsel of our choice. . . ." The policy defined "insured" as "you and the following *residents of your household*:

[para.] a. your relatives; . . . " (Italics added.) The [*963] policy defined "bodily injury" as "*bodily harm*, sickness or disease, *including* required care, loss of services and *death resulting therefrom*." (Italics added.)

Under "Section II -- Exclusions" the policy provided in pertinent part that "Coverage L -- Personal Liability . . . [does] [***4] not apply to: [para.] . . . g. bodily injury to you or any insured within the meaning of part (a) . . . of insured [as quoted above]. "

State Farm filed this action seeking a declaration that the policy excluded coverage for Karen's injuries and her children's wrongful deaths. The trial court concluded, "Coverage for injury or death to Karen Lewis and her children is clearly excluded in the homeowners insurance policy of Wesley Lewis. "

Discussion

(1) The interpretation of an insurance policy, like any other contract, is a matter of law as to which a reviewing court must make its own independent determination. (*Cal-Farm Ins. Co. v. TAC Exterminators, Inc. (1985) 172 Cal.App.3d 564, 571 [218 Cal.Rptr. 407]; Boogaert v. Occidental Life Ins. Co. (1983) 150 Cal.App.3d 875, 879 [198 Cal.Rptr. 357].*) (2) Our Supreme Court recently concluded, "It is a basic principle of insurance contract interpretation that doubts, uncertainties and ambiguities arising out of policy language ordinarily should be resolved in favor of the insured in order to protect his *reasonable* expectation of coverage. [Citations. [***5]] It is also well established, however, that this rule of construction is applicable only when the policy language is found to be unclear. [Citations.]" (3) A policy provision [**809] is ambiguous when it is capable of two or more constructions, both of which are reasonable. " [Citation.]' Whether language in a contract is ambiguous is a question of law. [Citation.] We are also guided by the principle that words in an insurance policy must be read in their ordinary sense, and any ambiguity cannot be based on a strained interpretation of the policy language. [Citation.]" (*Producers Dairy Delivery Co. v. Sentry Ins. Co. (1986) 41 Cal. 3d 903, 912 [226 Cal.Rptr. 558, 718 P.2d 920]*, italics in original.)

(4) We perceive no material ambiguity in the insurance policy at issue. The policy does not provide an unlimited universe of coverage. State Farm's obligations are triggered where a claim is made or suit is brought "for damages because of bodily injury . . . to which this

coverage applies, . . . " ³ This language unambiguously means that the damages must be caused in some manner by bodily injury covered by the policy. [***6]

3 No contention is made that property damage has any relevance to this case.

[*964] Not all kinds of bodily injury are covered. A conspicuous exclusion says personal liability coverage does not apply to "bodily injury to . . . any insured within the meaning of part (a)" An insured "within the meaning of part (a)" includes relatives of the insured who were residents of the insured's household. Karen and the children satisfied these criteria and were therefore insureds. Bodily injury to them is not covered by the policy. "Bodily injury" is defined to include "bodily harm . . . and death resulting therefrom. " Consequently, State Farm had no obligation to defend or indemnify Karen "for damages because of bodily injury" to her or to the children, or because of the children's deaths.

Karen contends, however, the insurance policy's exclusion contains an ambiguity because it does not state whether the term "bodily injury" as used in the exclusion for "bodily injury to . . . any insured" includes [***7] wrongful death. Karen claims a cause of action for "wrongful death," as commonly understood, is not a cause of action for "bodily injury" but a distinct cause of action for economic loss which belongs to the decedent's survivors. (See, e.g., *Krouse v. Graham (1977) 19 Cal. 3d 59, 66-72 [137 Cal.Rptr. 863, 562 P.2d 1022]; Fuentes v. Tucker (1947) 31 Cal. 2d 1, 9 [187 P.2d 752]; Farmers Ins. Exch. v. Brown (1967) 252 Cal.App.2d 120, 122 [60 Cal.Rptr. 1].*) Karen urges this court to construe the term "bodily injury" in her favor and assertedly in favor of coverage by holding it does not include wrongful death. (See, e.g., *Gray v. Zurich Insurance Co. (1966) 65 Cal. 2d 263, 269 [54 Cal.Rptr. 104, 419 P.2d 168].*)

We need not consider the merits of Karen's contention at length for if it is legally correct it proves too much. Karen's argument misperceives the role "bodily injury" plays in the policy. The exclusionary language does not exclude "causes of action" for certain kinds of bodily injury leaving all other claims subject to coverage. Rather, the exclusionary language merely [***8] defines certain kinds of bodily injury that are excluded from the insuring clause. Pursuant to the insuring clause as relevant here, State Farm has duties only where a claim is made "for damages because of [covered] bodily injury. " In the event Karen's wrongful death claim for damages is

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not made "because of bodily injury," as she contends, then there is simply no obligation under the insuring clause. That clause, as pertinent here, places no duty on the insurer to defend or indemnify against economic loss unless it is somehow caused by a covered bodily injury. On the other hand, if her wrongful death claim is "for damages because of bodily injury" to her or the children, that specie of bodily injury is expressly and conspicuously excluded from the insuring obligation. Either way, the policy failed to afford coverage for the wrongful deaths of the children.

Karen also argues the courts should refuse to enforce the applicable exclusion on the ground it violates public

policy. However, the exclusion at issue [*965] does not violate public policy. (*State Farm Fire & Cas. Co. v. Clendening* (1983) 150 Cal.App.3d 40, 43-44 [197 Cal.Rptr. 377]; [***9] see *Farmers Ins. Exchange v. Cocking* (1981) 29 Cal. 3d 383, 387 [173 Cal.Rptr. 846, 628 P.2d 1]; *Schwalbe v. Jones* (1976) 16 Cal. 3d 514, 521 [128 Cal.Rptr. 321, 546 P.2d 1033] and authorities cited therein.)

The trial court properly entered judgment for State Farm.

The judgment is affirmed.

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