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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000013-MR

ALAN DEAN HICKS AND
TRACY NORRIS HICKS, INDIVIDUALLY
AND AS THE CO-ADMINISTRATORS OF THE
ESTATE OF SARAH ELIZABETH HICKS — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 09-CI-003603

KENTUCKIANA MEDICAL RECIPROCAL RISK
RETENTION GROUP;
CHRISTOPHER L JOHNSRUDE, M.D;
PEDIATRIC CARDIOLOGY ASSOCIATES, P.S.C.
D/B/A PEDIATRIC CARDIOLOGY AND ADULT
CONGENITAL HEART DISEASE;
NORTON HEALTHCARE, INC.;
AND NORTON HOSPITALS, INC. D/B/A KOSAIR
CHILDREN'S HOSPITAL — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, COMBS, AND STUMBO, JUDGES.

COMBS, JUDGE: Alan Dean Hicks and Tracy Norris Hicks, individually and as administrators of the Estate of Sarah Elizabeth Hicks, appeal from the summary judgment of the Jefferson Circuit Court entered in favor of Kentuckiana Medical Reciprocal Risk Retention Group ("KMRRRG") rendered on December 4, 2013. The issue on appeal involves insurance coverage; specifically, whether KMRRRG is obligated to provide coverage under a professional liability insurance policy purchased by Pediatric Cardiology Associates, P.S.C. ("the P.S.C. policy") for the allegedly negligent acts or omissions of one of its physicians, Dr. Christopher L. Johnsrude. The trial court concluded that KMRRRG was not obligated to provide coverage, and the appellants contend that it erred in so concluding. After our review, we affirm.

As an infant, Sarah Elizabeth Hicks was diagnosed with congenital heart conditions that caused her to suffer with an abnormal heart rhythm. On April 14, 2008, Dr. Johnsrude of Pediatric Cardiology Associates performed an electrophysiology study and a cardiac ablation procedure on Sarah. These relatively minor procedures were intended to restore her heart to a proper rhythm. However, following the treatment, Sarah suffered a stroke and died at the age of ten years.

On April 10, 2009, the Hickses filed a wrongful death action against Dr. Johnsrude, Pediatric Cardiology Associates, Norton Hospitals, Inc., and Norton

Healthcare, Inc. The claims against the Norton defendants were eventually dismissed by summary judgment, and no appeal was taken.

In March 2013, the Hickses agreed to settle the negligence action that they had brought against Dr. Johnsrude and the vicarious liability claims that they had asserted against Pediatric Cardiology Associates. Under the terms of the settlement agreement, the parties agreed that coverage for the alleged negligent acts or omissions of Dr. Johnsrude was provided by KMRRRG under a professional liability policy issued to Dr. Johnsrude individually. KMRRRG paid out the limits under the Dr. Johnsrude's policy as part of the settlement of the wrongful death action.

However, KMRRRG and the Hickses did not agree that the separate liability policy issued by KMRRRG to Pediatric Cardiology Associates (the "P.S.C. policy") provided coverage for the group's vicarious liability for any negligent acts or omissions of Dr. Johnsrude. Consequently, as part of the settlement agreement, the parties agreed to submit that coverage dispute to the Jefferson Circuit Court for resolution.

The circuit court heard oral argument on October 7, 2013, and issued its opinion and order on December 4, 2013. The court concluded that there were no genuine issues of material fact and that KMRRRG was entitled to judgment as a matter of law. The court observed that the P.S.C. policy was clear and unambiguous on its face. According to the court, the policy expressly limited coverage to Pediatric Cardiology Associates and to those physicians and allied

health professionals named on a schedule prepared by the group. Only nurses and office staff employed by Pediatric Cardiology Associates were included on the schedule, and there is no dispute that Dr. Johnsrude was not included among those named in the list submitted by the P.S.C. The court observed that no physician was identified in the policy and that no premium was paid for coverage for any liability arising from the negligent acts or omissions of any physician. The Hickses filed a timely notice of appeal.

Summary judgment is proper where there exists no material issue of fact and the movant is entitled to judgment as a matter of law. Kentucky Rule[s] of Civil Procedure (CR) 56. The interpretation of an insurance policy is a question of law for the court that we review *de novo* on appeal. *K.M.R. v. Foremost Ins. Group,* 171 S.W.3d 751 (2005), *citing Cinelli v. Ward,* 997 S.W.2d 474 (Ky.App.1998). Where the terms of the policy are clear and unambiguous, the policy must be enforced as written. *Kemper Nat'l Ins. Companies v. Heaven Hill Distilleries, Inc.,* 82 S.W.3d 869 (Ky.2002). The material facts of this case are undisputed. Thus, we must determine from an examination of the provisions of the insurance policy whether KMRRRG is entitled to judgment as a matter of law.

The Hickses contend that the circuit court erred by rendering summary judgment in favor of KMRRRG. They argue that the policy issued to Pediatric Cardiology Associates covers claims made against the group for its vicarious liability for the negligent acts or omissions of *any physician acting on its behalf.* KMRRRG contends that the limited purpose of the P.S.C. policy is to provide

coverage to the P.S.C. for liability resulting from the acts or omissions of the allied health professionals and staff *employed by the group*. We must examine the language of the insurance policy in order to resolve the issue.

On its declarations page, the P.S.C. policy provides, in part, as follows:

> **Named Insured**
>
> Pediatric Cardiology Associates, PSC
>
> **Insured(s)**
>
> Those physicians and allied health professionals who are named on the Schedule of Insureds on file with the company, submitted by the **Named Insured.**

In Part I, Paragraph C, the policy describes four categories of insureds. It provides, in relevant part, as follows:

> **C. PERSONS INSURED**
>
> (1) The **Named Insured** referenced in the Declarations of this policy, *but only with respect to Professional Services rendered by an **Insured** or by any person other than a **physician** or **dentist*** under the direction of such **Insured**, for whose acts or omissions the **Named Insured** is legally responsible.
>
> (2) A **Physician** or **Dentist** who is a member of the **Named Insured**, who is licensed or certified to render **Professional Services** and who is named on the "Schedule of Insureds" submitted by the **Named Insured**.
>
> (3) An **Allied Health Professional** who is named on the "Schedule of Insureds" but only with respect to **Professional Services** rendered as an employee of the Named insured or an Insured.

> (4) A person or organization which, at the time of a **Medical Incident** giving rise to a claim under this policy, was an **Insured** under this policy or prior policies, issued by the Company, which this policy renews.

Emphasis added.

"Insured" is defined in Part II as follows:

> "*any person*, corporation, or organization *qualifying as an Insured under the Persons Insured provisions of Section I Part C* of this policy while rendering services on behalf of their respective University of Louisville Practice Plan.

Emphasis added.

Pursuant to these policy provisions, Pediatric Cardiology Associates, the "Named Insured," is covered for claims made against it regarding any professional services rendered by an "Insured" -- those physicians and allied health professionals who are named on the Schedule of Insureds (not including Dr. Johnsrude) -- or by any person other than a physician or dentist (thus, specifically excluding Dr. Johnsrude) under certain circumstances. The language included in the definition of "insured" in Part II limits the coverage provided to those instances where persons or entities qualifying under Part I, Paragraph C as insureds are performing professional services on behalf of his or her University of Louisville Practice Plan.

Although the parties read the terms of the P.S.C. policy with opposing results, each argues that its terms are plain and unambiguous. We agree that the

terms of the policy are clear, and we concur with the trial court's conclusion that the reading of the policy advanced by the Hickses is untenable.

The Hickses argue that the terms of the disputed policy provide coverage to the P.S.C. (as the Named Insured) for its vicarious liability for the negligence of it physicians, including Dr. Johnsrude. They contend that the coverage is provided under Part I, Paragraph C of the policy since Dr. Johnsrude was a physician rendering services on behalf of the P.S.C.'s University of Lousiville Practice Plan. We disagree.

Again, Part I, Paragraph C provides coverage for the P.S.C. "*but only with respect to Professional Services rendered by an* ***Insured*** *or by any person other than a* ***physician*** *or* ***dentist*** under the direction of such **Insured**, for whose acts or omissions the **Named Insured** is legally responsible." Emphasis added. While Dr. Johnsrude may have been rendering services on behalf of the University of Louisville Practice Plan, he did not qualify as an "insured" under the provisions of Part I, Paragraph C of the policy as he was not a physician named on the "Schedule of Insureds;" an allied health professional; or an insured under a prior policy.

Under the very terms of the policy, the definition of "Insured" found in Part II of the P.S.C. policy cannot be read to expand the coverage provided to Pediatric Cardiology Associates, in Part I, Paragraph C(1) so as to include coverage for the P.S.C.'s vicarious liability for the acts or omissions of Dr. Johnsrude. That construction proposed by the Hickses is not supported by the clear and unambiguous language of the policy of insurance.

Accordingly, we affirm the summary judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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