

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001241-MR

LEONARD GIBBONS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE FREDERIC J. COWAN, JUDGE
ACTION NO. 13-CI-005979

KENTUCKY FARM BUREAU MUTUAL
INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; NICKELL AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Leonard Gibbons brings this appeal from a July 21, 2014, opinion and order of the Jefferson Circuit Court granting summary judgment against Gibbons and dismissing his claims against Kentucky Farm Bureau Mutual Insurance Company (Farm Bureau). We affirm.

On October 14, 2011, Leonard Gibbons acquired real property including a house located at 57 Greene Road, Totz, Kentucky. Gibbons subsequently made renovations to the house and on August 4, 2012, Farm Bureau issued a Renewal Declaration upon the policy of insurance which included coverage of \$25,000 upon the dwelling and \$15,000 upon personal property. Two months later, on October 14, 2012, the house and its contents were destroyed by fire. Gibbons immediately notified Farm Bureau of the fire and his loss.

On December 12, 2012, Farm Bureau sent a letter to Gibbons requesting that he submit to an examination under oath. Farm Bureau also requested that Gibbons provide certain documents establishing his ownership of the property (deed and mortgage) and his whereabouts on the date of the fire (credit card and bank statements). Gibbons complied with Farm Bureau's requests, including the submission of a Sworn Statement of Proof of Loss. After its investigation, which lasted several months, Farm Bureau concluded that Gibbons intentionally set the fire. On August 13, 2013, Gibbons received a written notice of denial of his claim from Farm Bureau.

On November 13, 2013, Gibbons filed a complaint in Jefferson Circuit Court against Farm Bureau. Farm Bureau subsequently filed a motion to dismiss Gibbons's complaint as being untimely filed. Kentucky Rules of Civil Procedure (CR) 12.02(f). Farm Bureau maintained that the policy of insurance issued to Gibbons provided a one-year limitation period to initiate litigation on the claim which was triggered upon the date of the loss. The policy specifically

provided that “[n]o action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.”

Homeowner Policy at 12. Farm Bureau emphasized that the loss of Gibbons’s home occurred on October 14, 2012, and Gibbons did not file the complaint until November 13, 2013, some thirteen months after the loss. Farm Bureau argued that the complaint was filed after the one-year contractual limitation period expired and was time-barred.

By opinion and order entered July 21, 2014, the circuit court held that the one-year contractual limitation period barred Gibbons’s claims and rendered summary judgment in favor of Farm Bureau.¹ This appeal follows.

Gibbons contends that the circuit court erred by rendering summary judgment dismissing his claims against Farm Bureau. Gibbons specifically asserts the one-year statute of limitations contained in the homeowner’s insurance policy is unreasonable and thus invalid.

Summary judgment is proper where there exists no material issues of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). All facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.* Our review proceeds accordingly.

¹ The circuit court noted that Kentucky Farm Bureau filed a motion to dismiss pursuant to Kentucky Rules of Civil Procedure 12.02(f); however, as matters outside the pleadings were considered, the circuit court properly treated the motion as one for summary judgment under *Steelvest v. Scansteel Serv. Ctr.*, 807 S.W.2d 476 (Ky. 1991).

In Kentucky, it is well-established that a one-year limitation period set forth in a policy of insurance is generally enforceable and does not conflict with the fifteen-year statute of limitations upon a written contract as provided in KRS 413.090.² Historically, our common law has permitted the shortening of a statutory limitation period by contractual provision. In *Webb v. Ky. Farm Bureau Ins. Co.*, 577 S.W.2d 17 (Ky. 1978), the Kentucky Supreme Court upheld the validity of a policy of insurance that included a one-year limitation period. The Court specifically held that “the purpose of statutes of limitation is to encourage the prompt assertion of legal claims, and since there is nothing in their language nor inherent in their purpose which prevents parties from agreeing to a shorter period of limitation, a contractual provision with such a limitation is valid.” *Id.* at 18. The *Webb* Court also noted that “any reasonable shortening of the statutory period was in the public interest, and so long as it was reasonable, such limitation would be enforced.” *Id.* at 19 (citing *Burlew v. Fidelity and Casualty Co. of N.Y.*, 276 Ky. 132, 122 S.W.2d 990 (1938); *see also Johnson v. Calvert Fire Ins. Co.*, 298 Ky. 669, 183 S.W.2d 941 (1944); *Robert F. Simmons Constr. Co. v. American States Inc. Co.*, 426 S.W.2d 441 (Ky. 1968)).

In the case *sub judice*, the relevant facts are undisputed. Gibbons’s home was destroyed by fire on October 14, 2012. Gibbons received written notice of Farm Bureau’s denial of his claim on August 13, 2013. Subsequently, Gibbons

² In this case, the applicable statute of limitations is fifteen (15) years as provided in Kentucky Revised Statutes (KRS) 413.090(2).

filed his complaint against Farm Bureau some thirteen months after the loss, on November 13, 2013. Although Gibbons argues that the one-year limitation period in the policy of insurance is unreasonable, our law is clear that a one-year contractual limitation period in a policy of insurance is not ordinarily unreasonable and is certainly not under the circumstances of this case. *See Webb*, 577 S.W.2d 17. Farm Bureau notified Gibbons that his claim under the insurance policy was denied on August 13, 2013. Gibbons had almost two months to file a complaint against Farm Bureau before expiration of the one-year contractual limitation period. Under the circumstances of this case, we hold that one-year limitation period set forth in the homeowners's policy is reasonable and valid. *See Webb*, 577 S.W.2d 17.

Gibbons alternatively contends that his cause of action against Farm Bureau did not accrue until Farm Bureau breached the contract of insurance by denying his claim. In support thereof, Gibbons argues that the word "accrue" is not defined in the insurance code; thus, the court "must determine whether there is any basis for concluding that the homeowner's contractual insurance claim 'accrued' at the time of the fire." Gibbons Brief at 14. Gibbons attempts to bolster his argument by analogizing his claim under the insurance policy to a claim under an underinsured motorist (UIM) provision. Gibbons asserts that his contractual claim under the insurance policy should be treated like a UIM claim; thus, his claim would not accrue until Farm Bureau denied the claim for benefits.

We reject Gibbons’s assertion that his claim did not accrue until Farm Bureau denied the claim. Under the plain terms of the homeowner’s insurance policy issued to Gibbons, the one-year limitation period was triggered upon the “date of loss.” The date of loss is clearly the date Gibbons’s house was destroyed by fire and not the date his claim was denied by Farm Bureau. Farm Bureau denied his claim some two months before expiration of the one-year limitation period. Upon the whole, we are constrained to affirm the circuit court’s decision to dismiss Gibbons’s complaint as untimely filed.

For the foregoing reasons, the opinion and order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Damon B. Willis
Louisville, Kentucky

BRIEF FOR APPELLEE:

Valerie W. Herbert
Louisville, Kentucky