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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001604-MR

ESTATE OF MARY MAE PRICE — APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 06-CI-00993

SHELTER MUTUAL INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: The Estate of Mary Price[1] appeals from an order granting summary judgment in favor of Shelter Mutual Insurance Company entered by the Pulaski Circuit Court on August 6, 2015. That order held that Shelter did not handle Mary Price's insurance coverage claim in bad faith or violate Kentucky's

[1] Mary Price originally brought the underlying lawsuit, but died during the pendency of the action.

Unfair Claims Settlement Practices Act ("UCSPA"). The Estate argues that Shelter's multiple denials of Ms. Price's insurance claims were done in bad faith and in violation of the UCSPA and the court erred in granting the insurance company summary judgment. We find no error and affirm.

This case has previously been before this Court; therefore, we will utilize that opinion's recitation of facts.

> On March 7, 2003, Appellant [Mary Price] entered into an auction sales contract with [Samuel] Godby [and his realty company] wherein he would sell at auction Appellant's forty-acre farm in Pulaski County, Kentucky. At the time of the initial contract, all the property was to be sold except some dairy equipment located on it. Godby was to receive six percent commission. The sale was scheduled for May 10, 2003.
>
> After signing the initial contract, but prior to the auction, Appellant decided to reserve from sale the house located on the property. Godby accepted this and noted the reservation in the written auction instructions. The reservation of the house and dairy equipment was also announced at the auction.
>
> At the auction, [Melvin and Anna] Childers purchased the property upon which the house was located. Appellant orally agreed to have the house moved off the property within 60 days.
>
> Godby then had a deed prepared which conveyed the land from Appellant to the Childers[es]. The deed was signed by Appellant on or about June 10, 2003. However, the deed was silent as to the reservation of the house. Around the same time, Godby gave Appellant a closing statement setting forth the outcome of the auction, i.e., how much the land was sold for, how much money was spent on expenses and to pay off liens on the property, and how much money Appellant was ultimately going to receive. Additionally, the statement contained a

> statement which released Godby from any future claims arising from the transaction. Appellant was directed to sign the closing statement as an acknowledgement that she received it.
>
> Appellant had trouble finding someone to move the house off the property and entered into a lease agreement with the Childers[es] to rent the land until she could get the house moved. Appellant missed some rent payments and the Childers[es] moved to evict her from the land by filing a forcible detainer action against her. The day of the hearing of the detainer action, the house burned down.
>
> Appellant had the house insured by Shelter Mutual Insurance, another party in the underlying cause of action. However, because the deed did not reserve the house for Appellant, the insurance company denied her coverage. Appellant then filed suit against Godby for negligence, against the Childers[es] for reformation of the deed, and against Shelter Mutual Insurance for breach of contract.
>
> After discovery was taken, all parties filed summary judgment motions. Summary judgment was denied for Shelter Mutual Insurance and Appellant, but granted for Godby and the Childers[es].

Price v. Godby, 263 S.W.3d 598, 599-600 (Ky. App. 2008).

Ms. Price then appealed to this Court the orders granting summary judgment in favor of Godby and the Childerses. This Court reversed the orders granting summary judgment and remanded the case to the trial court with instructions for the trial court to reform the deed in order to indicate the house was reserved from the sale.

Once the deed was reformed and indicated the house was still owned by Ms. Price, Shelter again denied Ms. Price's insurance claim. Citing *Columbia Gas of*

Kentucky, Inc. v. Maynard, 532 S.W.2d 3 (Ky. 1975), Shelter argued that a house must be considered personal property if its owner is different from the owner of the land on which it is situated, and the policy Ms. Price had with Shelter specifically excluded coverage for personal property. After additional litigation, Ms. Price was granted summary judgment by the court on the issue of insurance coverage. The court held that the insurance policy covered an insured's "dwelling", that the term "dwelling" was not defined, and that the policy did not specify that a dwelling had to be real property; therefore, the court found that she had an insurable interest in the dwelling. Shelter then paid the insurance claim on March 27, 2009.[2]

Ms. Price's claims of bad faith and violation of the UCSPA had been bifurcated early in these proceedings and reserved until the issue of insurance coverage had been determined. After Shelter paid the insurance claim, the case against Shelter proceeded with additional discovery and litigation. On August 6, 2015, the trial court granted summary judgment in favor of Shelter and found that the Estate could not show "intentional misconduct or reckless disregard of the rights" of Ms. Price to warrant submitting the case to a jury. The court found that Shelter's claim denials were reasonable under the circumstances. This appeal followed.

> The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. . . . "The record must be viewed in a light most

[2] Ms. Price died on July 19, 2010, and her estate was substituted as the plaintiff.

> favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.,* 807 S.W.2d 476, 480 (Ky. 1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest,* 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose,* 683 S.W.2d 255 (Ky. 1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . ." *Huddleston v. Hughes,* 843 S.W.2d 901, 903 (Ky. App. 1992)[.]

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996). "Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue *de novo*." *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001).

The UCSPA is found in Kentucky Revised Statute (KRS) 304.12-230. Ms. Price alleged violation of KRS 304.12-230(6) which states:

> It is an unfair claims settlement practice for any person to commit or perform any of the following acts or omissions: . . .
>
> (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear[.]

A violation of the UCSPA is deemed bad faith by the courts of Kentucky. *See Wittmer v. Jones*, 864 S.W.2d 885 (Ky. 1993).

The Estate argues on appeal that Shelter did not have a reasonable basis to deny Ms. Price's insurance claim; therefore, it acted in bad faith.

> "[A]n insured must prove three elements in order to prevail against an insurance company for alleged refusal in bad faith to pay the insured's claim: (1) the insurer must be obligated to pay the claim under the terms of the policy; (2) the insurer must lack a reasonable basis in law or fact for denying the claim; and (3) it must be shown that the insurer either knew there was no reasonable basis for denying the claim or acted with reckless disregard for whether such a basis existed.... [A]n insurer is ... entitled to challenge a claim and litigate it if the claim is debatable on the law or the facts."

Id. at 890 (citation omitted).

> Before the cause of action exists in the first place, there must be evidence sufficient to warrant punitive damages:
>
> > "The essence of the question as to whether the dispute is merely contractual or whether there are tortious elements justifying an award of punitive damages depends first on whether there is proof of bad faith and next whether the proof is sufficient for the jury to conclude that there was 'conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others.'"

Id. (citations omitted). "This means there must be sufficient evidence of intentional misconduct or reckless disregard of the rights of an insured or a claimant to warrant submitting the right to award punitive damages to the jury." *Id*.

Shelter denied Ms. Price's claim three times after the house burned down: in a letter dated September 13, 2005; in a letter dated May 25, 2006; and in a motion for summary judgment filed on November 13, 2008, after the case was remanded to the trial court from the Court of Appeals. In the first two denials,

Shelter denied the claim because it believed Ms. Price did not have an insurable interest in the house. Stated differently, Shelter did not believe Ms. Price owned the home. The third denial claimed the house became personal property when Ms. Price no longer owned the land upon which it was situated and the insurance policy did not cover loss of personal property.

When Shelter sent the first denial letter, the only evidence it had regarding the ownership of the house was the deed which transferred the property to the Childerses. This deed did not indicate that Ms. Price retained ownership of the dwelling. After receiving this denial, Ms. Price obtained a recording of the auction in which the auctioneer stated the house was reserved from the sale. She then delivered this recording to Shelter. During this same time, Mr. Childers went to the local Shelter agent's office and stated that he owned the house in question.[3] The Childerses also provided Shelter with vacate notices their attorney sent to Ms. Price once she began missing rent payments, eviction notices sent by the Childerses' attorney, and information regarding the formal eviction proceedings the Childerses initiated against Ms. Price. Shelter also examined Ms. Price under oath. Shelter then denied the claim a second time because it maintained Ms. Price did not own the house.

When the Court of Appeals ordered that the deed be reformed in 2008, that opinion also discussed how Ms. Price's house became personal property when she

[3] Mr. Childers believed that when Ms. Price failed to move the house within the allotted time and began to miss rent payments that he became the owner of the house.

no longer owned the land upon which it was situated. Upon remand to the trial court, Shelter continued to deny the claim because the insurance policy at issue did not cover loss of personal property.[4] As stated previously, the trial court eventually held that Ms. Price's house was covered by the insurance policy. Shelter did not appeal this ruling and paid Ms. Price the amount owed under the policy, $50,000.

> [A] tort claim for a bad faith refusal to pay must first be tested to determine whether the insurer's refusal to pay involved a claim which was fairly debatable as to either the law or the facts. If a genuine dispute does exist . . . the insured's claim is fairly debatable and the tort claim for bad faith based upon the insurer's refusal to pay the claim may not be maintained.

Empire Fire & Marine Ins. Co. v. Simpsonville Wrecker Serv., Inc., 880 S.W.2d 886, 890 (Ky. App. 1994). We believe Shelter did not act in bad faith when it denied Ms. Price's claim. The first two denials were based on an incorrect deed and conflicting evidence from Ms. Price and the Childerses as to who owned the house. The third denial came after the house was deemed personal property and the insurance policy specifically excluded coverage for personal property.

Ms. Price's insurance claim was "fairly debatable" as the facts surrounding the ownership of the house were ambiguous and debatable. Shelter had a reasonable basis to deny the claim and did not act in bad faith, with outrageous conduct, or with evil motive. For these reasons, we affirm the judgment of the trial court.

[4] This personal property issue was mentioned in Shelter's documents and records for this claim and in correspondence between Ms. Price's attorney and Shelter, but it had not previously been used as a reason for denying the insurance claim.

THOMPSON, JUDGE, CONCURS.

COMBS, JUDGE, CONCURS BY SEPARARTE OPINION.

COMBS, JUDGE, CONCURRING: I cannot agree with Shelter that its conduct was reasonable. It exerted strenuous efforts to evade its duty of coverage even after the deed was reformed. However, I concur in result only because of the high threshold of reckless disregard required to state a cause of action for an unfair claim settlement practice. Shelter did not reach that threshold despite its questionable delay in honoring this claim.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Robert E. Norfleet Somerset, Kentucky	Jason E. Williams London, Kentucky