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Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000171-MR

CHRIS JOHNSON D/B/A EXTREME RAMPAGE, AND CHRIS JOHNSON, AND CHRISTOPHER JOHNSON, RAMPAGE LLC, CHRISTOPHER JOHNSON D/B/A RAMPAGE, LLC, AND/OR EXTREME RAMPAGE (COLLECTIVELY KNOWN AS "THE JOHNSON PARTIES") BY AND THROUGH ASSIGNEE CASEY ARNOLD — APPELLANTS

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NOS. 14-CI-00948 & 15-CI-00777

CAPITOL SPECIALTY INSURANCE CORPORATION — APPELLEE

AND

NO. 2017-CA-000172-MR

CASEY ARNOLD, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF CHAD ARNOLD, AND AS NEXT FRIEND AND GUARDIAN/ CONSERVATOR FOR MILES ARNOLD, — APPELLANTS

AND AS ASSIGNEE FOR ALL CLAIMS HELD
BY "THE JOHNSON PARTIES"

APPEAL FROM FAYETTE CIRCUIT COURT
v. HONORABLE KIMBERLY N. BUNNELL, JUDGE
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CAPITOL SPECIALTY INSURANCE CORPORATION APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND THOMPSON, JUDGES.

CLAYTON, CHIEF JUDGE: These consolidated appeals[1] are taken from a Fayette Circuit Court order entering declaratory summary judgment in favor of Capitol Specialty Insurance Corporation. The primary issue is whether a general commercial liability insurance policy issued by Capitol covers potential damages stemming from the death of a participant in an obstacle race, or whether exclusions in the policy bar recovery.

The obstacle race, known as "Extreme Rampage," was organized and presented by Chris Johnson, the owner of Rampage, LLC. The 5K race, which

[1] The two appeals were consolidated on Capitol's motion to the extent that they are being considered by the same three-judge panel.

included a climbing wall and mud pits, was held at the Kentucky Horse Park on March 2, 2013. Under the terms of his contract with the Horse Park, Johnson was required to "provide public liability insurance issued by a reputable company, which shall cover both participants and spectators with policy coverage of one million dollars ($1,000,000.00) minimum for each bodily injury[.]"

Johnson purchased the policy from Stephen Delre, an insurance agent employed at the Tim Hamilton Insurance Agency ("THIA"). Delre filled out an application for insurance on Johnson's behalf and submitted it to Insurance Intermediaries, Inc. ("III"). III submitted the application to Capitol. Capitol prepared a proposal for coverage which III gave to THIA. Johnson accepted the proposal and III produced the policy based upon the terms offered by Capitol.

The policy contained two provisions excluding bodily injury to the event participants from its coverage. For purposes of this opinion, the exclusions will be referred to as the "sponsor" exclusion and the "arising out of" exclusion.

The sponsor exclusion provided as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXCLUSION – ATHLETIC OR SPORTS PARTICIPANTS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Description of Operations:
Special event – 5K run with obstacles.

. . .

With respect to any operations shown in the Schedule, this insurance does not apply to "bodily injury" to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

The participant exclusion provided as follows:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY
EXCLUSION – PARTICIPANTS
(SPECIFIED ACTIVITIES/OPERATIONS)

SCHEDULE

Descriptions of Activity/Operations

Mud Runs and Tough Guy Races

This insurance does not apply to "bodily injury," "property damage," "personal or advertising injury" or medical expense arising out of any preparation for or participation in any of the activities or operations shown in the schedule above.

During the course of the Extreme Rampage race, one of the participants, Chad Arnold, collapsed and died. His wife, Casey Arnold, acting individually, as the administratrix of his estate and as guardian/conservator for

their minor son Miles ("Arnold"), filed a wrongful death suit naming numerous defendants, including Johnson. Johnson sought defense and indemnity under the Capitol policy. Capitol denied coverage and filed a declaratory judgment complaint in Fayette Circuit Court on March 17, 2014, asserting it had no duty to defend or indemnify Johnson because the policy expressly excluded coverage for event participants.

Johnson and Arnold subsequently filed a complaint in a different division of Fayette Circuit Court against Capitol, THIA, Delre, and III, asserting claims of negligence; violation of the Kentucky Consumer Protection Act and the Unfair Claims Settlement Practices Act; fraud; and breach of contract. On April 15, 2015, the two actions were consolidated by court order. Johnson and Arnold filed a motion for summary judgment; Capitol filed a motion for summary declaratory judgment. The trial court held extensive hearings on the motions and thereafter entered an order granting Capitol's motion and dismissing with prejudice all claims asserted against Capitol by Johnson and Arnold. Additional facts will be set forth as necessary later in this opinion.

In granting summary declaratory judgment to Capitol, the trial court held that that the policy issued by Capitol to Johnson excluded coverage to the Johnson defendants for the underlying claims of the Arnold defendants because the sponsor exclusion was clear and unambiguous and the Johnson defendants are a

"sponsor" within the plain meaning of the word as used in the exclusion. The trial court further held that, as a matter of law, neither the concurrent proximate cause doctrine nor the efficient proximate cause doctrine applies to afford coverage under the policy to the Johnson defendants for the claims of the Arnold defendants; that neither Delre nor THIA is an agent of any kind of Capitol; and finally, that no other oral or written contract modified and/or superseded the policy to afford coverage by Capitol.

These appeals by Johnson and Arnold followed.

In reviewing a grant of summary judgment, our inquiry focuses on "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." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) (citing Kentucky Rules of Civil Procedure (CR) 56.03). Summary judgment may be granted when "as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc*., 807 S.W.2d 476, 483 (Ky. 1991) (internal quotation marks and citation omitted). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Id*. at 480. On the other hand, "a party opposing a properly supported summary judgment motion cannot

defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id*. at 482. "An appellate court need not defer to the trial court's decision on summary judgment and will review the issue *de novo* because only legal questions and no factual findings are involved." *Hallahan v. The Courier-Journal*, 138 S.W.3d 699, 705 (Ky. App. 2004).

We have grouped the Appellants' arguments into the following six categories: first, that the terms of the policy do not reflect what Johnson requested from Delre; second, that Delre and THIA were actual or apparent agents of Capitol whose alleged misrepresentations or omissions to Johnson about the policy bound their principal; third, that neither the "sponsor" exclusion nor the "arising out of" exclusion in the policy was applicable; fourth, that the exclusions create an ambiguity in the policy when read with the coverage endorsements; fifth, that the concurrent proximate cause doctrine provides coverage under the policy; and sixth, that the trial court erred in dismissing all claims against Capitol.

1. The purchase of the policy

Johnson denies that the insurance policy attached to Capitol's declaratory judgment complaint is a true and accurate copy of the policy he purchased and admits only that the document attached to the complaint is the document he received in the mail after he had paid for the policy.

According to deposition testimony, Johnson first spoke with Delre about obtaining insurance coverage for the Extreme Rampage event in a telephone conversation in December 2012. Johnson had purchased an insurance policy for a similar race event from Delre approximately six months earlier. Delre questioned Johnson about the type of coverage he was seeking. Johnson was unaware that Delre was simultaneously filling out a "special event" insurance application. According to Johnson, he told Delre he needed participant coverage and Delre specifically asked him how many participants would be involved in the event. Delre nonetheless left blank on the "special event" application form whether athletic participant coverage was requested. Delre signed Johnson's name to the application for insurance without Johnson reviewing the document. After the insurance application was submitted, Delre sent a proposal to Johnson which he claims he never received.

On February 8, 2013, Johnson visited Delre and THIA's office to pay for the policy in the amount of $477. He signed a "subjectivities page" which stated that the policy quote was subject to verification of the following:

> No events involving the following: abortion rights, pro choice or right-to-life rallies/parades or gatherings, air shows or ballooning events, auto racing regardless of vehicle size (including go-karts, motorcycles and snowmobiles), cattle drives, events involving inherently dangerous or stunting activities, events with water rides/slides etc., political demonstrations or protest rallies by groups with a history of violent incidents, [n]o events

> with fireworks displays. AND – Spectators must be a safe distance (100 feet minimum) from the obstacle course.

Johnson was not shown the actual policy, nor was he informed of the participation exclusions in the insurance proposal.

A copy of the complete policy containing the "sponsor" exclusion and the "arising out of" exclusion was mailed to Johnson on February 27, 2013. Johnson asserts that the policy did not conform to what he agreed to in his conversation with Delre and that he was never informed that participants would be excluded from coverage. He points out that the policy was also later unilaterally modified by Delre after the Horse Park requested a certificate of insurance indicating that it was an "additional insured" on the policy.

Johnson cannot avoid the terms of the insurance contract by pleading ignorance of its contents. It is axiomatic that "insured persons are charged with knowledge of their policy's contents[.]" *Bidwell v. Shelter Mut. Ins. Co.*, 367 S.W.3d 585, 592 (Ky. 2012) (citing *National Life & Accident Ins. Co. v. Ransdell*, 259 Ky. 559, 82 S.W.2d 820, 823 (1935)). "In *Midwest Mutual Insurance Company v. Wireman*, 54 S.W.3d 177 (Ky. App. 2001), the Court of Appeals held an insured can waive UM coverage by signing the application for liability coverage, even if the insured alleges the agent never explained the meaning of UM coverage to him." *Moore v. Globe Am. Cas. Co.*, 208 S.W.3d 868,

870 (Ky. 2006). "All persons are presumed to know the law and the mere lack of knowledge of the contents of a written contract for insurance cannot serve as a legal basis for avoiding its provisions." *Id.* (internal quotation and citation omitted).

Although Johnson claims, based on his interaction with Delre, that the terms of the policy were not what he had anticipated, no genuine issue of material fact exists that Johnson signed the policy and, as a matter of law, was presumed to know its contents. The trial court did not err in ruling that there was no genuine issue of material fact concerning the policy and that no other oral or written contract modified or superseded the policy to afford coverage to Johnson for Arnold's claims.

2. Were Delre and THIA agents of Capitol

Arnold seeks to hold Capitol liable for any omissions or misrepresentations of Delre and THIA by arguing that they were Capitol's actual or apparent agents. "Under common law principles of agency, a principal is vicariously liable for damages caused by torts of commission or omission of an agent or subagent, . . . acting on behalf of and pursuant to the authority of the principal." *Williams v. Kentucky Dep't of Educ.*, 113 S.W.3d 145, 151 (Ky. 2003), *as modified* (Sept. 23, 2003) (internal citations omitted).

"Actual authority arises from a direct, intentional granting of specific authority from a principal to an agent." *Kindred Healthcare, Inc. v. Henson*, 481 S.W.3d 825, 830 (Ky. App. 2014). The *Restatement (Third) of Agency* § 2.02(1) (2006) provides that "[a]n agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent reasonably understands the principal's manifestations and objectives when the agent determines how to act." Kentucky's Insurance Code provides that "[a]ny insurer shall be liable for the acts of its agents when the agents are acting in their capacity as representatives of the insurer and are acting within the scope of their authority." Kentucky Revised Statutes (KRS) 304.9-035.

There is no evidence in the record that Capitol made a direct, intentional grant of authority to THIA and Delre to act as its agents or representatives; nor is there evidence that Capitol made any manifestations of its objectives to THIA or Delre with the expectation that they would act to achieve those objectives. Furthermore, as elicited in the hearing before the trial court, Capitol does not have a written agreement with THIA or Delre establishing them as its agents nor is there a registration or filing with the Kentucky Department of Insurance designating them as licensed agents of Capitol. By contrast, Delre and

THIA are registered, authorized agents of Nationwide Insurance in Kentucky and Johnson actually believed he would be purchasing a Nationwide policy from Delre.

As evidence of an actual agency relationship, Arnold points to the fact that THIA and Capitol both have contracts with III, the intermediary brokerage company which sent Johnson's application for insurance to Capitol, seeking a policy proposal. The existence of contracts with the same third party was not sufficient in itself to create an actual agency relationship between THIA and Delre and Capitol. Capitol prepared the insurance proposal in reliance on the information contained in the application submitted by III; Capitol had no contact with or control over Delre or THIA. Consequently, Capitol could not be bound by what Johnson believed Delre had promised.

Similarly, there is no evidence that THIA and Delre were apparent agents of Capitol. "Apparent authority . . . is not actual authority but is the authority the agent is held out by the principal as possessing. It is a matter of appearances on which third parties come to rely." *Mark D. Dean, P.S.C. v. Commonwealth Bank & Tr. Co.*, 434 S.W.3d 489, 499 (Ky. 2014) (quoting *Mill St. Church of Christ v. Hogan*, 785 S.W.2d 263, 267 (Ky. App. 1990)). "One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one

appearing to be a servant or other agent as if he were such." *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 257 (Ky. 1985) (quoting *Restatement (Second) of Agency* § 267 (1958)).

The only representations made to Johnson by Capitol were in the form of the proposal and written policy he signed. Capitol never held out Delre and THIA as its agents. Johnson admitted he had no contact with Capitol whatsoever and did not even know the policy he purchased was provided by Capitol until after the Extreme Rampage event.

The trial court did not err in holding that no agency relationship, actual or apparent, existed between Capitol and Delre and THIA.

3. Applicability of the policy exclusions

The trial court ruled that the "sponsor" exclusion was clear and unambiguous and the Johnson defendants were a "sponsor" within the plain meaning of the word as it was used in the exclusion. The Appellants disagree, arguing that the multiple definitions of the term "sponsor," which is not defined in the policy, render it ambiguous.

"Interpretation and construction of an insurance contract is a matter of law for the court." *Kemper Nat'l Ins. Companies v. Heaven Hill Distilleries, Inc.*, 82 S.W.3d 869, 871 (Ky. 2002). Exclusions in insurance contracts

> are to be narrowly interpreted and all questions resolved in favor of the insured. Exceptions and exclusions are to

> be strictly construed so as to render the insurance effective. Any doubt as to the coverage or terms of a policy should be resolved in favor of the insured. And since the policy is drafted in all details by the insurance company, it must be held strictly accountable for the language used.

Eyler v. Nationwide Mut. Fire Ins. Co., 824 S.W.2d 855, 859-60 (Ky. 1992) (internal citations omitted).

On the other hand,

> [t]he rule of strict construction against an insurance company certainly does not mean that every doubt must be resolved against it and does not interfere with the rule that the policy must receive a reasonable interpretation consistent with the parties' object and intent or narrowly expressed in the plain meaning and/or language of the contract. Neither should a nonexistent ambiguity be utilized to resolve a policy against the company. We consider that courts should not rewrite an insurance contract to enlarge the risk to the insurer.

St. Paul Fire & Marine Ins. Co. v. Powell-Walton-Milward, Inc., 870 S.W.2d 223, 226-27 (Ky. 1994).

The Appellants rely on an opinion of the federal district court for the Eastern District of Pennsylvania, *Sciolla v. West Bend Mut. Ins. Co*., 987 F. Supp. 2d 594 (E.D. Pa. 2013) which held an identical insurance exclusion to be inapplicable after concluding the term "sponsor" is ambiguous due to the lack of a universally accepted definition of the term by dictionaries and the courts. *Sciolla*,

987 F. Supp. 2d at 603. The *Sciolla* court assembled the following dictionary definitions of "sponsor:"

> The full definition given by Merriam-Webster is: "a person or an organization that pays for or plans and carries out a project or activity; especially: one that pays the cost of a radio or television program usually in return for advertising time during its course." *Merriam-Webster's Collegiate Dictionary,* 1140 (9th ed. 1983). . . .
>
> . . . [T]he American Heritage Dictionary defines sponsor, in relevant part, as "[o]ne that finances a project or an event carried out by another person or group, especially a business enterprise that pays for radio or television programming in return for advertising time." *American Heritage Dictionary of the English Language,* 1679, (4th ed., 2009). Other dictionaries defines sponsor as "[o]ne that finances a project or an event carried out by another," *The American Heritage College Dictionary,* 1315 (3d ed. 1993), or, as a verb, "to pay or contribute towards the expenses of a radio or television program, a performance, or other event or work in return for advertising space or rights." *Oxford English Dictionary,* 306 (2d ed. 1989).

Id. at 602.

The *Sciolla* court grouped the definitions into two categories: "The first concept is that of a person or an organization *that pays for* a project or activity. . . . The second concept is of a person or an organization *that plans and carries out* a project or activity." *Id*. (italics in original).

As recognized by the *Sciolla* court, in order to be found ambiguous, a term with multiple definitions must be subject to more than one interpretation

when applied to the facts of the case before it. *Id*. at 603. "Because a word has more than one meaning does not mean it is ambiguous. The sense of a word depends on how it is being used; only if more than one meaning applies within that context does ambiguity arise." *Board of Regents of Univ. of Minnesota v. Royal Ins. Co. of Am.*, 517 N.W.2d 888, 892 (Minn. 1994). As the United States Supreme Court has observed in the context of statutory interpretation, "[a]mbiguity is a creature not of definitional possibilities but of statutory context[.]" *Brown v. Gardner*, 513 U.S. 115, 118, 115 S. Ct. 552, 555, 130 L. Ed. 2d 462 (1994).

It is the Appellants' position that Johnson did not "sponsor" the Extreme Rampage but actually organized, promoted, and ran the event. In his deposition, Johnson stated that he was not a "sponsor" of the Extreme Rampage event but that he "owned" the event, and that he actually discovered Delre and THIA while seeking sponsorships for Rampage events. Delre in his deposition confirmed that Johnson asked him to be a sponsor. When he was asked how he got started funding Rampage, LLC, Johnson replied "Sponsorships and my own pocket." Thus, the evidence indicates that Johnson helped to fund Extreme Rampage and also planned and carried it out. There is no evidence that he financed a project carried out by another or that he paid for the project in exchange for advertising space.

The fact that Johnson's actions do not meet each and every one of the multiple definitions of "sponsor" does not render the term ambiguous, however, when the term is viewed in the context of the language of the exclusion, which applies to "bodily injury to any person while practicing for or participating in any sports or athletic contest or exhibition that **you** sponsor." (Emphasis added.)

The policy provides the following definition of "you": "Throughout this policy the words 'you' and 'your' refer to the Named Insured shown in the declarations, and any other person or organization qualifying as a Named Insured under this policy. The words 'we', 'us' and 'our' refer to the company providing this insurance." Thus, Johnson, the Named Insured, is "you." When the term "sponsor" is viewed within the context of an insurance policy covering one discrete event sponsored by the Named Insured, Johnson, it was plainly intended to refer to Johnson and to the specific Extreme Rampage event he was sponsoring.

The Appellants argue that the trial court did not have the right to choose which of the multiple competing definitions of sponsor applied. When viewed in the context of the exclusion, however, the definition is plainly limited to the sponsorship activities of the Name Insured, Johnson.

Because the trial court did not err in holding that the "sponsor" exclusion is applicable, we need not address the validity of the "arising out of" exclusion.

4. The applicability of the concurrent proximate cause doctrine

Johnson argues that even if the policy exclusions apply, the concurrent proximate cause doctrine provides coverage under the policy. Johnson contends that the doctrine was adopted by the Kentucky Supreme Court in *Reynolds v. Travelers Indem. Co. of Am.*, 233 S.W.3d 197, 203 (Ky. App. 2007). *Reynolds* is an opinion of the Court of Appeals, and it did not officially adopt the doctrine; it approved of the reasoning in a case from our sister state in *Bowers v. Farmers Insurance Exchange*, 99 Wash. App. 41, 991 P.2d 734 (2000), which applied the "efficient proximate cause doctrine." *Reynolds*, 233 S.W.3d at 203.

The doctrine holds that

> Where the loss is essentially caused by an insured peril with the contribution of an excluded peril merely as part of the chain of events leading to the loss, there is coverage under the policy. Stated alternately, coverage will exist where a covered and noncovered peril join to cause the loss provided that the covered peril is the efficient and dominant cause.

10A *Couch on Insurance* 3d § 148:61 (2005).

Applying the doctrine, Johnson argues that even if Chad Arnold's participation in the race was an excluded peril, the loss was essentially caused by a peril that was insured. He contends that the allegations of Arnold's complaint, such as failure to provide reasonable medical treatment; failure to plan and have proper policies and procedures; and failure to train, instruct, and supervise are not

predicated upon a cause of action or risk that is excluded under the policy. He points to the affidavit of a doctor who reviewed Chad Arnold's medical records and post-mortem examination and concluded that he died of a pre-existing heart condition unconnected with his participation in the race.

This argument ignores the fact that the "sponsor" exclusion does not reference causation or a specific "peril"; it merely excludes participants in the covered event from recovery for bodily injury, whatever the cause. It does not require a finding that the bodily injury was caused by participation in the event.

We agree with the reasoning of the federal district court for the Western District of Kentucky, which addressed a factually-similar situation involving a student who collapsed and died while practicing for his college lacrosse team. *Underwriters Safety & Claims, Inc. v. Travelers Prop. Cas. Co. of Am.*, 152 F. Supp. 3d 933 (W.D. Ky. 2016), *aff'd on other grounds*, 661 F. App'x 325 (6th Cir. 2016). The college's insurance policy contained an exclusion for athletic participants. The plaintiffs argued that the allegations of their complaint were focused on the college's failure to provide pre-participation medical forms to physicians who examined the student and on the college's failure to render proper medical treatment. The district court described these arguments as "red herrings" that attempted "to re-contextualize the fatal injury as a result of medical malpractice or concurrently caused by medical malpractice and engagement in

athletic activity." *Underwriters*, 152 F. Supp. 3d at 937. The complaint filed by the student's estate "did not seek redress for a bodily injury that occurred during pre-participation athletic medical screenings. The policy specifically excludes bodily injury while engaged in athletic or sports activities. Passfield [the student] was engaged in such an activity at the time of the injury. While the Court liberally construes insurance policies in favor of the insured, the Court also strictly construes exclusions. This is an instance of the latter." *Id*. Similarly, in the case before us, the exclusion applies specifically to bodily injury while participating in the Extreme Rampage. The exclusion does not require a causal link between the participation and the injury to apply. There is no genuine issue of fact that Chad Arnold was a participant in the race and that, as the complaint alleges, "during the course of the event, the decedent collapsed, consciously suffered for an undetermined amount of time, and died."

5. Do the two exclusions create an ambiguity in the policy

Johnson further argues that the two exclusions create an ambiguity in the policy when read in conjunction with two coverage endorsements. Johnson claims that the "Combination Endorsement-Special Events" and the "Limitation-Classification Endorsement" provide unfettered coverage while the two exclusions limit coverage, thus creating an ambiguity. Johnson's brief gives no reference to the record to show where the endorsements are found, nor does it indicate when or

how the trial court addressed this issue. CR 76.12(4)(c)(v) requires an appellate brief to contain "ample supportive references to the record and . . . a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." The purpose of this requirement "is so that we, the reviewing Court, can be confident the issue was properly presented to the trial court and therefore, is appropriate for our consideration." *Oakley v. Oakley*, 391 S.W.3d 377, 380 (Ky. App. 2012). "[E]rrors to be considered for appellate review must be precisely preserved and identified in the lower court." *Skaggs v. Assad*, 712 S.W.2d 947, 950 (Ky. 1986). We are simply "without authority to review issues not raised in or decided by the trial court." *Regional Jail Authority v. Tackett*, 770 S.W.2d 225, 228 (Ky. 1989). Nor is it the task of the appellate court to search the record for pertinent evidence "not pointed out by the parties in their briefs." *Baker v. Weinberg*, 266 S.W.3d 827, 834 (Ky. App. 2008).

We recognize that the hearing on August 25, 2016, at which this issue may have been argued before the trial court, was not recorded. Nonetheless, "when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court." *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985).

6. Dismissal of all claims against Capitol.

Finally, Arnold argues that the trial court erred in dismissing all causes of action against Capitol. Arnold contends that the arguments before the trial court only concerned the applicability of the insurance policy, but never addressed the additional allegations in the complaint of negligence, consumer protection, unfair claims settlement practices, and fraud. Arnold does not explain what the grounds for Capitol's liability on these claims would be if, as the trial court ruled, the "sponsor" exclusion is valid and Delre and THIA were not acting as Capitol's agents. Under these circumstances, the trial court did not err in dismissing all claims against Capitol.

For the foregoing reasons, the order of the Fayette Circuit Court granting summary declaratory judgment to Capitol is affirmed.

MAZE, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANTS, CHRIS JOHNSON D/B/A EXTREME RAMPAGE, AND CHRIS JOHNSON, AND CHRISTOPHER JOHNSON, RAMPAGE LLC, CHRISTOPHER JOHNSON D/B/A RAMPAGE, LLC, AND/OR EXTREME RAMPAGE:

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