SUPREME COURT OF MISSISSIPPI

Marsha R. Hinton and Thomas F. Hinton v. Pekin Insurance Company

268 So. 3d 543 (Miss. 2019) · No. No. 2018-CA-00383-SCT · Decided February 21, 2019

SUMMARY

The Mississippi Supreme Court affirmed summary judgment for Pekin Insurance Company in a wrongful-death action arising from injuries sustained in a fall from a tree stand. The court held that the insurance policy clearly included an exclusion for tree stands and related equipment and that the plaintiffs failed to establish a genuine issue of material fact concerning the exclusion. The court also affirmed the denial of the plaintiffs' motion for partial summary judgment based on waiver and estoppel theories.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chamberlin, Justice; King, P.J.; Coleman, J.; Maxwell, J.; Beam, J.; Ishee, J.; Griffis, J.; Randolph, C.J.; Kitchens, P.J.
JURISDICTION	Mississippi
DECIDED	February 21, 2019
DOCKET	No. 2018-CA-00383-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed the denial of their motion for partial summary judgment and the grant of Pekin's motion for summary judgment dismissing Pekin from a wrongful-death action.
STANDARD OF REVIEW	Summary judgment and insurance-policy interpretation are reviewed de novo. Summary judgment is proper when the record shows no genuine issue of material fact and the movant is entitled to judgment as a matter of law; evidence is viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published opinion; precedential Mississippi Supreme Court decision.
PARTIES	Marsha R. Hinton, Thomas F. Hinton v. Pekin Insurance Company

TOPICS

insurance coverage · duty to defend · summary judgment · waiver · declaratory relief insurance

PRACTICE AREAS

insurance · contracts · torts · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the Pekin policy included and applied the 481T exclusion for tree stands and related equipment.
2. Whether a genuine issue of material fact existed regarding whether the 481T exclusion was omitted from the 2012 amending policy or inserted after Timothy Hinton's accident.
3. Whether The Sportsman's Guide's additional-insured status required judicial determination.
4. Whether Pekin was estopped from asserting coverage defenses because it initially assigned counsel, withdrew from the defense, failed to obtain a declaratory judgment, or allowed C&S to default.
5. Whether Pekin waived its coverage defenses by failing to defend under a reservation of rights or promptly seek declaratory relief.
6. Whether Pekin was judicially estopped from relying on testimony concerning C&S's tender of the defense and belief about coverage.

HOLDINGS

1. The Pekin policies unambiguously excluded coverage for deer or tree stands and related equipment, so the policy did not cover Timothy Hinton's loss.
2. The Hintons failed to identify a genuine issue of material fact concerning whether the 481T exclusion was omitted from the amending policy or created and inserted after the accident.
3. The additional-insured issue was moot after the court determined that the policy excluded coverage, and the court declined to issue an advisory opinion.
4. Pekin was not estopped from asserting its coverage defenses because it promptly investigated and denied coverage, limited the defense representation, and the record did not establish prejudice caused by its conduct.
5. Pekin did not waive its coverage defenses by denying coverage, declining to defend indefinitely, or failing to proceed under the Hintons' proposed reservation-of-rights or declaratory-judgment theory.
6. Pekin was not judicially estopped from relying on Cole's testimony concerning C&S's tender of the defense or belief about coverage.

KEY QUOTATIONS

> *"The interpretation of an insurance policy is a question of law, not one of fact."* (¶24)

> *"We find that an insurance company should not be estopped from raising coverage defenses when it assigns its insured an attorney upon receipt of a notice of claim, investigates the claim and promptly denies coverage."* (¶48)

> *“Pekin denied coverage to C&S and did not waive its policy defenses.”* (¶60)

FACTUAL BACKGROUND

Timothy Hinton died after falling from a tree stand while using a fall-arrest system manufactured by C&S Global Imports. Pekin insured C&S under policies whose application, schedules, and attached endorsements included a 481T exclusion for deer or tree stands and related equipment. C&S had sought cheaper insurance without tree-stand coverage, and both C&S's president and its insurance agent testified that the Pekin policy was intended to exclude such coverage. Pekin initially assigned counsel after receiving notice of the claim but promptly denied coverage and limited funding of the defense.

PROCEDURAL HISTORY

The Hintons sued C&S Global Imports and Pekin after Timothy Hinton died from injuries sustained in a fall from a tree stand. After C&S defaulted, the Hintons sought partial summary judgment against Pekin based on waiver and estoppel theories. The circuit court denied that motion, granted Pekin summary judgment on the declaratory-judgment claim, and entered a final Rule 54(b) judgment dismissing Pekin with prejudice. The Mississippi Supreme Court affirmed both rulings.

DISPOSITION

affirmed

CASES CITED

- Pekin Ins. Co. v. Hinton, 192 So. 3d 966 (Miss. 2016)
- Mitchell v. Ridgewood E. Apartments, LLC, 205 So. 3d 1069, 1073 (Miss. 2016)
- Borries v. Grand Casino, Inc., 187 So. 3d 1042, 1045-46 (Miss. 2016)
- Stribling Inv., LLC v. Mike Rozier Constr. Co., Inc., 189 So. 3d 1216, 1219 (Miss. 2016)
- Daniels v. Crocker, 235 So. 3d 1, 6 (Miss. 2017)
- Minn. Life Ins. Co. v. Columbia Cas. Co., 164 So. 3d 954, 967 (Miss. 2014)
- Noxubee Cty. Sch. Dist. v. United Nat. Ins. Co., 883 So. 2d 1159, 1166 (Miss. 2004)
- Hughes v. Hosemann, 68 So. 3d 1260, 1263 (Miss. 2011)
- Baker Donelson Bearman & Caldwell, P.C. v. Muirhead, 920 So. 2d 440, 451 (Miss. 2006)
- Moeller v. Am. Guar. & Liab. Ins. Co., 707 So. 2d 1062, 1069 (Miss. 1996)
- S. Farm Bureau Cas. Ins. Co. v. Logan, 238 Miss. 580, 119 So. 2d 268, 269-72 (1960)
- Md. Cas. Co. v. Nestle, 2010 WL 3735756, at *1, *2, *6-7 (S.D. Miss. Sept. 17, 2010)
- Titan Indem. Co. v. Williams, 743 So. 2d 1020, 1022-23 (Miss. Ct. App. 1999)
- Wilson v. Gen. Motors Acceptance Corp., 883 So. 2d 56, 68 (Miss. 2004)
- Johnson v. Zerbst, 304 U.S. 458, 464 (1938)
- Moorman v. Tower Mgmt. Co., 451 F. Supp. 2d 846, 853 (S.D. Miss. 2006)
- Swift v. Aberdeen Lumber Co., 172 Miss. 697, 159 So. 301, 305 (1935)

- Employers Ins. of Wausau v. Ehlco Liquidating Tr., 708 N.E.2d 1122, 1134-35 (Ill. 1999)
- Kirk v. Pope, 973 So. 2d 981, 991 (Miss. 2007)
- Clark v. Neese, 131 So. 3d 556, 560 (Miss. 2013)
