

SUPREME COURT OF MICHIGAN

Auto-Owners Insurance Company v. Ferwerda Enterprises, Inc.

784 N.W.2d 44 (Mich. 2010) · No. Docket Nos. 140735, 140738 · Decided July 15, 2010

SUMMARY

The Michigan Supreme Court vacated portions of the Court of Appeals opinion that inaccurately described Auto-Owners' defense of Holiday Inn and the trial court's findings regarding Auto-Owners' contractual obligations. The Court remanded for clarification of whether Auto-Owners' claim was frivolous under MCR 2.625(A)(2) and MCL 600.2591, while denying leave to appeal in all other respects and retaining jurisdiction.

CASE DETAILS

COURT	Supreme Court of Michigan
JURISDICTION	Michigan
DECIDED	July 15, 2010
DOCKET	Docket Nos. 140735, 140738
DISPOSITION	vacated
PROCEDURAL POSTURE	The Michigan Supreme Court considered applications for leave to appeal from the Court of Appeals' January 28, 2010 judgment and, in lieu of granting leave, vacated portions of the Court of Appeals' remand opinion and remanded to the Mason Circuit Court for clarification of the basis for an attorney-fee award.
PRECEDENTIAL VALUE	Published Michigan Supreme Court opinion/order; precedential status not otherwise specified in the supplied text.
PARTIES	Ferwerda Enterprises, Inc., d/b/a Holiday Inn Express Ludington, Daryl Bronkema, Next Friend of Jackson Thomas Bronkema, Caleb Andrew Bronkema and Savannah Joy Bronkema, Daryl Bronkema, Individually, Melissa Bronkema v. Auto-Owners Insurance Company

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QUESTIONS PRESENTED

1. Whether the Court of Appeals' remand opinion should be vacated to correct inaccurate statements regarding Auto-Owners' defense of Holiday Inn and the trial court's breach-of-contract finding.
2. Whether the record should be clarified regarding whether the trial court found Auto-Owners' claim frivolous under MCR 2.625(A)(2) and MCL 600.2591(3)(a)(i) through (iii).

HOLDINGS

1. The portions of the Court of Appeals' opinion stating that Auto-Owners declined to defend Holiday Inn and that the trial court found Auto-Owners breached its contract because it was obligated to defend were vacated because those statements were incorrect.
2. The Mason Circuit Court was required to clarify whether it found that Auto-Owners' claim was frivolous within the meaning of MCR 2.625(A)(2) and MCL 600.2591(3)(a)(i) through (iii), specifically as to Ferwerda Enterprises, Inc.

KEY QUOTATIONS

“In clarifying its findings and rulings, the trial court shall refer specifically to, and base its findings and rulings specifically upon, the provisions of MCR 2.625(A)(2) and MCL 600.2591, and, in particular, on the definitions of “frivolous” contained in MCL 600.2591(3)(a)(i) through (iii).” (at 45)

FACTUAL BACKGROUND

Auto-Owners continued defending Holiday Inn while pursuing a declaratory ruling concerning its insurance obligations in litigation brought by the Bronkemas. The Court of Appeals' remand opinion incorrectly stated that Auto-Owners had declined to defend Holiday Inn and that the trial court had found Auto-Owners breached its contract because it was obligated to defend. The trial court awarded attorney fees, but the record was unclear whether it expressly found Auto-Owners' claim frivolous under Michigan Court Rule 2.625(A)(2) and Michigan Compiled Laws § 600.2591.

PROCEDURAL HISTORY

Auto-Owners sought declaratory relief concerning its insurance obligations while continuing to defend Holiday Inn in the underlying suit brought by the Bronkemas. The Court of Appeals issued an opinion on remand containing statements that Auto-Owners had declined to defend Holiday Inn and that the trial court had found a breach of contract. The Michigan Supreme Court vacated those portions, remanded for clarification of whether Auto-Owners' claim was frivolous under the applicable rule and statute, denied leave to appeal in all other respects, and retained jurisdiction.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The Mason Circuit Court must clarify whether it found that Auto-Owners' claim satisfied the definition or definitions of frivolous set forth in MCL 600.2591(3)(a)(ii) and/or (iii), as to Ferwerda Enterprises, Inc. The court must refer specifically to and base its findings and rulings on MCR 2.625(A)(2) and MCL 600.2591, particularly the definitions in subsection (3)(a)(i) through (iii). It may permit additional briefing or argument and conduct any necessary hearing, but must file its clarification and any hearing transcript with the Clerk of the Michigan Supreme Court within 56 days of the order.

OPINION

PER CURIAM.

784 N.W.2d 44 (2010) AUTO-OWNERS INSURANCE COMPANY, Plaintiff/Counter-Defendant/Appellee, v. FERWERDA ENTERPRISES, INC., d/b/a Holiday Inn Express Ludington, Defendant/Counter-Plaintiff/Appellant, and Daryl Bronkema, Next Friend of Jackson Thomas Bronkema, Caleb Andrew Bronkema and Savannah Joy Bronkema, and Daryl Bronkema, Individually, and Melissa Bronkema, Defendants.

Auto-Owners Insurance Company, Plaintiff/Counter-Defendant/Appellee, v. Ferwerda Enterprises, Inc., d/b/a Holiday Inn Express Ludington, Defendant/Counter-Plaintiff/Appellee, and Daryl Bronkema, Next Friend of Jackson Thomas Bronkema, Caleb Andrew Bronkema and Savannah Joy Bronkema, and Daryl Bronkema, Individually, and Melissa Bronkema, Defendants-Appellants.

Docket Nos. 140735, 140738. COA No. 277574. Supreme Court of Michigan. July 15, 2010. Order On order of the Court, the applications for leave to appeal the January 28, 2010 judgment of the Court of Appeals are considered. Pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE the portions of the Court of Appeals opinion on remand stating incorrectly that the plaintiff, Auto-Owners Insurance Company, "declined to defend...

Holiday Inn in the suit brought by the Bronkemas," and that the "trial court found that Auto-Owners breached its contract because it was obligated to defend... Holiday Inn." In fact, Auto-Owners continued to defend Holiday Inn while it pursued a declaratory ruling in this case.

We REMAND this case to the Mason Circuit Court for clarification of the record on the issue whether the trial court found that Auto-Owners' claim was frivolous within the meaning of MCR 2.625(A)(2) and MCL 600.2591(3)(a)(i) through (iii).

Although the trial court's ruling that the defendants were entitled to an attorney fee award, coupled with its obvious awareness of the American Rule and the requirements of MCR 2.625(A)(2), imply that the trial court found that the requirements of the court rule were satisfied, the record on this issue is unclear.

On remand, the trial court shall clarify whether it found that Auto-Owners' claim satisfied the definition(s) of "frivolous" set forth in MCL 600.2591(3)(a)(ii) and/or (iii), as to its insured,

defendant Ferwerda Enterprises, Inc. In clarifying its findings and rulings, the trial court shall refer specifically to, and base its findings and rulings specifically upon, the provisions of MCR 2.625(A)(2) and MCL 600.2591, and, in particular, on the definitions of "frivolous" contained in MCL 600.2591(3)(a)(i) through (iii).

The trial court may allow further argument and briefing by the parties, and may conduct any further hearing it may deem necessary, but it shall file its clarification of the record, together with the transcript of any hearing, with the Clerk of this Court within 56 days of the date of this order. *45 In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We retain jurisdiction.