COURT OF APPEALS OF GEORGIA

Aequicap Insurance Co. v. Canal Insurance Co., 303 Ga. App. 508

693 S.E.2d 863 (Ga. Ct. App. 2010) · No. A09A2382 · Decided March 24, 2010

SUMMARY

The Georgia Court of Appeals held that an MCS-90 endorsement attached to Aequicap Insurance Company's policy required Aequicap to pay any final judgment arising from a public-injury claim caused by the negligent operation of a leased truck. The court concluded that the endorsement applied despite policy exclusions, lack of vehicle designation, and conflicting lease provisions, and that the driver was the statutory employee of the authorized motor carrier. The court affirmed the trial court's grant of partial summary judgment.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Bernes, Judge; Smith, Presiding Judge; Phipps, Judge
JURISDICTION	Georgia
DECIDED	March 24, 2010
DOCKET	A09A2382
DISPOSITION	affirmed
PROCEDURAL POSTURE	Aequicap appealed from an order granting Randall Coleman O'Berry partial summary judgment in a declaratory judgment action concerning insurance coverage under an MCS-90 endorsement.
STANDARD OF REVIEW	The grant of summary judgment is reviewed de novo, viewing the evidence in the light most favorable to the nonmovant, to determine whether a genuine issue of material fact exists and whether the movant is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published and precedential Georgia Court of Appeals opinion
PARTIES	Aequicap Insurance Company v. Randall Coleman O'Berry, Canal Insurance Company, CDS Transport, Inc., Jeffrey Floyd, Capital City Insurance Company

TOPICS

insurance coverage · declaratory relief insurance · vicarious liability · standard of review · appellate procedure

PRACTICE AREAS

insurance coverage · commercial motor carrier liability · declaratory judgment · appellate procedure

QUESTIONS PRESENTED

1. Whether the MCS-90 endorsement attached to Aequicap's policy required Aequicap to pay any final judgment recovered by O'Berry for injuries caused by Floyd's negligent operation of the leased truck.
2. Whether Floyd was CDS Transport's statutory employee and CDS Transport was vicariously liable for Floyd's negligence under the federal motor-carrier leasing regulations.
3. Whether conflicting terms in Aequicap's insurance policy and the lease agreement could limit or preclude enforcement of the MCS-90 endorsement.
4. Whether Aequicap could raise on appeal CDS Transport's obligation to reimburse Aequicap for payments made under the MCS-90 endorsement when the issue was not raised and ruled on below.

HOLDINGS

1. The MCS-90 endorsement applied to O'Berry's claim and required Aequicap to pay, within the policy limits, any final judgment recovered by O'Berry arising from the negligent operation of the truck.
2. Because CDS Transport was required to assume exclusive possession, control, and use of the leased truck and responsibility for its operation, Floyd was CDS Transport's statutory employee for purposes of the regulations and CDS Transport was vicariously liable as a matter of law for Floyd's negligence.
3. Conflicting policy and lease provisions could not limit Aequicap's liability to an injured member of the public under the MCS-90 endorsement.
4. The appellate court could not consider Aequicap's contention that CDS Transport was obligated to reimburse it for amounts paid under the MCS-90 endorsement because Aequicap had not raised the issue by cross-claim and motion for summary judgment or obtained a ruling below.

KEY QUOTATIONS

> *"It is well-established that the primary purpose of the MCS-90 is to assure that injured members of the public are able to obtain judgment from negligent authorized interstate carriers."* (303 Ga. App. 512; 693 S.E.2d 867)

> *"Aequicap is required to pay, within its policy limits, any final judgment recovered by O'Berry in the underlying personal injury action."* (303 Ga. App. 513; 693 S.E.2d 868)

FACTUAL BACKGROUND

CDS Transport was a for-hire interstate motor carrier insured by Aequicap. CDS leased a tractor-trailer and the driving services of Jeffrey Floyd, and Floyd was driving for CDS when his truck collided with Randall Coleman O'Berry's truck and another automobile. Aequicap's policy contained an MCS-90 endorsement, while the policy excluded certain leased vehicles and drivers; Floyd also had a nontrucking policy from Canal. O'Berry sought to hold Aequicap responsible for any judgment arising from his personal-injury claim.

PROCEDURAL HISTORY

O'Berry sued Jeffrey Floyd for personal injuries arising from a truck collision and asserted that Aequicap was obligated to pay any judgment under the MCS-90 endorsement attached to its policy issued to CDS Transport. The trial court granted O'Berry partial summary judgment, determining that the endorsement provided coverage and that Floyd was CDS Transport's statutory employee, making CDS Transport vicariously liable. Aequicap appealed; the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Matjoulis v. Integon Gen. Ins. Corp., 226 Ga. App. 459(1), 486 S.E.2d 684 (1997)
- Empire Fire, etc. Ins. Co. v. Guaranty Nat. Ins. Co., 868 F.2d 357, 362-363(III)(A) (10th Cir. 1989)
- Price v. Westmoreland, 727 F.2d 494, 496-497(II) (5th Cir. 1984)
- Armstrong v. United States Fire Ins. Co., 606 F. Supp. 2d 794, 808-809(VI)(C)(1) (E.D. Tenn. 2009)
- Empire Fire, etc. Ins. Co. v. J. Transport, Inc., 880 F.2d 1291, 1298 (11th Cir. 1989)
- Hot Shot Express v. Assicurazioni Generali, S.P.A., 252 Ga. App. 372, 373-374, 556 S.E.2d 475 (2001)
- Nationwide Mut. Ins. Co. v. Holbrooks, 187 Ga. App. 706, 712(3), 371 S.E.2d 252 (1988)
- Simmons v. King, 478 F.2d 857, 866-867 (5th Cir. 1973)
- Kolencik v. Progressive Preferred Ins. Co., Civil Action No. 1:04-CV-3507-JOF, 2006 WL 738715, at *4-5, 2006 U.S. Dist. LEXIS 24855, at *14-17 (II)(A) (N.D. Ga. Mar. 17, 2006)
- T.H.E. Ins. Co. v. Larsen Intermodal Svcs., 242 F.3d 667, 673(II)(A)(1) (5th Cir. 2001)
- Canal Ins. Co. v. First Gen. Ins. Co., 889 F.2d 604, 611(III)(B)(2) (5th Cir. 1989), recalled and modified on other grounds at 901 F.2d 45 (5th Cir. 1990)
- Kirkland v. Earth Fare, 289 Ga. App. 819, 821(1), 658 S.E.2d 433 (2008)
- Simpson v. Empire Truck Lines, 571 F.3d 475, 476-478(II) (5th Cir. 2009)
- Judy v. Tri-State Motor Transit Co., 844 F.2d 1496, 1499-1502(II) (11th Cir. 1988)
- Clark v. Roberson Mgmt. Corp., Case No. 5:03CV274 (DF), 2005 WL 6345578, at *2-4, 2005 U.S. Dist. LEXIS 46972, at *7-10(III)(A)(1) (M.D. Ga. Jan. 11, 2005)
- Penn v. Virginia Intl. Terminals, 819 F. Supp. 514, 521-523 (E.D. Va. 1993)

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