SUPREME COURT OF ARKANSAS

Neill v. Nationwide Mutual Fire Insurance Co., 355 Ark. 474

139 S.W.3d 484 (2003) · No. No. 03-214 · Decided December 18, 2003

SUMMARY

The Supreme Court of Arkansas held that summary judgment was improper where a genuine factual dispute existed regarding whether an insurance agent failed to ask about prior fire losses or inaccurately recorded the insured's response. Although an insured generally is bound by the contents of a signed application, the insurance-contract exception permits consideration of fraud, negligence, or mistake by the insurer's agent. The court reversed and remanded.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Hannah, Justice; Arnold, Chief Justice; Robert L. Brown, Justice; Thornton, Justice
JURISDICTION	Arkansas
DECIDED	December 18, 2003
DOCKET	No. 03-214
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a summary judgment declaring an insurance policy void ab initio because the application failed to disclose the insured's prior fire losses; review was granted after the court of appeals reversed and remanded.
STANDARD OF REVIEW	Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, the court determines whether the evidentiary materials leave a material fact unanswered, viewing the evidence in the light most favorable to the nonmoving party and resolving doubts and inferences against the moving party.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Lamar Neill, Rose Neill v. Nationwide Mutual Fire Insurance Company

TOPICS

insurance coverage · summary judgment · declaratory relief insurance · contracts · appellate procedure

PRACTICE AREAS

insurance · civil procedure · appellate procedure · contracts

QUESTIONS PRESENTED

1. Whether an insured's signature on an insurance application conclusively binds the insured to an incorrect answer when the application was prepared by the insurer's agent and the evidence conflicts about whether the agent asked the relevant question or accurately recorded the insured's response.
2. Whether the conflicting evidence regarding the application interview created a genuine issue of material fact precluding summary judgment declaring the policy void ab initio.

HOLDINGS

1. An insured's signature does not require summary judgment for the insurer when the application was prepared by the insurer's agent and the evidence conflicts about whether the agent's fraud, negligence, or mistake caused the error.
2. Summary judgment was improper because the conflicting evidence about what occurred during the application interview presented a genuine issue of material fact concerning the cause of the misstatement.

KEY QUOTATIONS

> *"We hold that where an insured signs an application which was prepared by an insurance company's agent, and a conflict in the evidence arises as to whether an error on an insurance application was caused by the fraud, negligence or mistake of the agent, a question of material fact is presented which precludes entry of summary judgment."* (485)

> *"Because there is a dispute about what happened between Neill and Nationwide in the application interview, there is a genuine issue of material fact that precludes summary judgment."* (489)

> *"If the agent misstated Neill's response, or if the agent failed to ask all the questions, the conduct of the agent is imputed to the insurer, and the insurer is estopped from setting up the false answers in the application to avoid the policy."* (489)

FACTUAL BACKGROUND

Nationwide's agent verbally asked Neill questions during the homeowners-insurance application process, entered responses into a computer, printed the application, and gave it to Neill for signature. The application stated "NONE" under past losses, although Neill had suffered three prior fire losses, and Neill did not read the application before signing it. After a later fire, Nationwide learned of the prior losses and denied coverage, asserting that the policy was void because of a material misrepresentation. Neill maintained that the agent never asked about prior losses, while Nationwide asserted that the question had been asked and answered negatively.

PROCEDURAL HISTORY

The trial court granted Nationwide summary judgment, concluding that Neill's three prior fire losses were material and that his signature bound him to the application. The Arkansas Court of Appeals reversed and remanded. The Arkansas Supreme Court granted Nationwide's petition for review and considered the matter as though it had originally been filed there.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

Reverse the summary judgment and remand for further proceedings because the factual dispute concerning the application interview must be resolved.

CASES CITED

- Neill v. Nationwide Mut. Fire Ins. Co., 81 Ark. App. 67, 98 S.W.3d 448 (2003)
- BPS, Inc. v. Parker, 345 Ark. 381, 47 S.W.3d 858 (2001)
- Craighead Elec. Coop. Corp. v. Craighead County, 352 Ark. 76, 98 S.W.3d 414 (2003)
- Cole v. Laws, 349 Ark. 177, 76 S.W.3d 878 (2002)
- Adams v. Arthur, 333 Ark. 53, 969 S.W.2d 598 (1998)
- Ferrell v. Columbia Mut. Cas. Ins. Co., 306 Ark. 533, 816 S.W.2d 593 (1991)
- Old Colony Life Ins. Co. v. Fetzer, 176 Ark. 361, 3 S.W.2d 46 (1928)
- Banks v. Evans, 347 Ark. 383, 64 S.W.3d 746 (2002)
- Carmichael v. Nationwide Life Ins. Co., 305 Ark. 549, 810 S.W.2d 39 (1991)
- Dodson v. Abercrombie, 212 Ark. 918, 208 S.W.2d 433 (1948)
- Pittsburgh Steel Co. v. Wood, 109 Ark. 537, 160 S.W. 519 (1913)
- Mitchell Mfg. Co. v. Kempner, 84 Ark. 349, 105 S.W. 880 (1907)
- Massachusetts Mut. Life Ins. Co. v. Brun, 187 Ark. 790, 62 S.W.2d 961 (1933)
- Belew v. Griffis, 249 Ark. 589, 460 S.W.2d 80 (1970)
- Clark v. Trammell, 208 Ark. 450, 186 S.W.2d 668 (1945)
- Old Equity Life Ins. Co. v. Crumby, 241 Ark. 982, 411 S.W.2d 292 (1967)
- Interstate Fire Ins. Co. v. Ingram, 256 Ark. 986, 511 S.W.2d 471 (1974)
- Continental Cas. Co. v. Campbell, 242 Ark. 654, 414 S.W.2d 872 (1967)
- Aetna Life Ins. Co. v. Routon, 207 Ark. 132, 179 S.W.2d 862 (1944)
- Southern National Ins. Co. v. Heggie, 206 Ark. 196, 174 S.W.2d 931 (1943)
- Burnett v. Philadelphia Life Ins. Co., 81 Ark. App. 300, 101 S.W.3d 843 (2003)
- Farm Bureau Mut. Ins. Co. v. Foote, 341 Ark. 105, 14 S.W.3d 512 (2000)
- General Agents Ins. Co. v. St. Paul Ins. Co., 22 Ark. App. 46, 732 S.W.2d 868 (1987)
- Time Ins. Co. v. Graves, 21 Ark. App. 273, 734 S.W.2d 213 (1987)

- Gilcreast v. Providential Life Ins. Co., 14 Ark. App. 11, 683 S.W.2d 942 (1985)
- American Nat'l Ins. Co. v. Hale, 172 Ark. 958, 291 S.W. 82 (1927)