SUPREME COURT OF NEBRASKA

Hillabrand v. American Family Mutual Insurance Co., 271 Neb. 585

713 N.W.2d 494 (2006) · No. S-05-049 · Decided May 12, 2006

SUMMARY

The Nebraska Supreme Court held that an underinsured motorist policy issued to a corporation did not cover the corporation's owner, officer, director, and employee for injuries sustained while driving his personally owned vehicle on company business. The court concluded that the policy's use of the term "you" for the corporate named insured was unambiguous and that the relevant exclusion did not violate Nebraska law. The court affirmed summary judgment for American Family Mutual Insurance Company.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Hannon, Judge, Retired; Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	May 12, 2006
DOCKET	S-05-049
DISPOSITION	affirmed
PROCEDURAL POSTURE	Both parties moved for summary judgment on whether the defendant's commercial automobile insurance policies provided underinsured motorist coverage to the plaintiff. The district court overruled the plaintiff's motion, sustained the defendant's motion, and dismissed the petition. The plaintiff appealed.
STANDARD OF REVIEW	Summary judgment is proper when the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and the moving party is entitled to judgment as a matter of law. Interpretation of an insurance policy is a question of law reviewed independently by the appellate court.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert S. Hillabrand v. American Family Mutual Insurance Company

TOPICS

uninsured motorist | insurance coverage | contract interpretation | summary judgment | civil procedure

PRACTICE AREAS

insurance law | motor vehicle insurance | civil litigation

QUESTIONS PRESENTED

1. Whether a commercial automobile insurance policy issued to a corporation is ambiguous because it defines an insured person as 'you or a relative' while defining 'you' as the named insured and the named insured is a corporation.
2. Whether the policy's UIM provisions covered Hillabrand, an owner, officer, director, and employee of the corporate named insured, while he was injured in the course of corporate business driving a personally owned vehicle.
3. Whether the policy's exclusion for injury sustained while occupying a vehicle not insured under the policy was more restrictive than Neb. Rev. Stat. § 44-6413 and therefore void.

HOLDINGS

1. An automobile insurance policy issued to a corporation is not rendered ambiguous merely because it refers to the corporation as 'you' when the policy clearly defines 'you' as the named insured and clearly identifies the corporation as the named insured.
2. The UIM coverage in American Family's policies issued to Parker Heating did not cover Hillabrand's injuries sustained while he was driving a personally owned vehicle, even though he was acting within the course and scope of corporate employment.
3. The challenge to the policy exclusion under Neb. Rev. Stat. § 44-6413 was irrelevant because Hillabrand was not a named insured under the corporate policy and was not occupying a vehicle owned by the corporate named insured or a relative of that named insured.

KEY QUOTATIONS

> *"We conclude that an automobile insurance policy issued to a corporation is not rendered ambiguous merely because the body of the policy refers to the corporation using the personal pronoun "you" when the word "you" is clearly defined to be the named insured and the corporation is clearly designated as the named insured."* (501)

> *"Robert has not shown that any genuine issue of material fact exists concerning whether he is entitled to coverage under the insurance policy issued to the corporation, Parker Heating."* (502)

FACTUAL BACKGROUND

Robert S. Hillabrand, an owner, officer, director, and employee of Hillabrand, Inc., was injured in a head-on collision while driving a van owned by him and his wife to make a service call for the corporation. The at-fault driver's insurer paid its $25,000 liability limit, and the insurer of Hillabrand's personal vehicle paid its $25,000 UIM limit. Hillabrand sought additional UIM benefits under seven policies issued by American Family to the corporation, each providing $100,000 per person in UIM coverage. The policies defined the named insured as the corporation and excluded coverage for injury sustained while occupying a vehicle not insured under the policy if owned by the named insured or a resident of the named insured's household.

PROCEDURAL HISTORY

Hillabrand sued American Family seeking $100,000 in underinsured motorist benefits under policies issued to his corporation. The district court determined that the policies did not provide coverage for his injuries sustained while driving his personally owned vehicle on corporate business, granted American Family summary judgment, denied Hillabrand summary judgment, and dismissed the action. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Andres v. McNeil Co., 270 Neb. 733, 707 N.W.2d 777 (2005)
- Molina v. American Alternative Ins. Corp., 270 Neb. 218, 699 N.W.2d 415 (2005)
- Allied Mut. Ins. Co. v. City of Lincoln, 269 Neb. 631, 694 N.W.2d 832 (2005)
- Guerrier v. Mid-Century Ins. Co., 266 Neb. 150, 663 N.W.2d 131 (2003)
- Gary's Implement v. Bridgeport Tractor Parts, 270 Neb. 286, 702 N.W.2d 355 (2005)
- Hawkeye-Sec. Ins. v. Lambrecht & Sons, 852 P.2d 1317 (Colo. App. 1993)
- General Ins. Co. of America v. Smith, 874 P.2d 412 (Colo. App. 1993)
- Scott-Pontzer v. Liberty Mut. Fire, 85 Ohio St. 3d 660, 710 N.E.2d 1116 (1999)
- Westfield Ins. Co. v. Galatis, 100 Ohio St. 3d 216, 797 N.E.2d 1256 (2003)
- Seaco Ins. Co. v. Davis-Irish, 300 F.3d 84 (1st Cir. 2002)
- American Economy Ins. Co. v. Bogdahn, 89 P.3d 1051 (Okla. 2004)
- Poulton v. State Farm Fire & Cas. Cos., 267 Neb. 569, 675 N.W.2d 665 (2004)
- Boutilier v. Lincoln Benefit Life Ins. Co., 268 Neb. 233, 681 N.W.2d 746 (2004)
- Cornhusker Cas. Co. v. Farmers Mut. Ins. Co., 268 Neb. 168, 680 N.W.2d 595 (2004)