SUPREME COURT OF OKLAHOMA

Equity Insurance Co. v. City of Jenks

184 P.3d 541 (Okla. 2008) · No. 104456 · Decided April 1, 2008

SUMMARY

The Supreme Court of Oklahoma held that an insurer's anticipatory notice stating that an automobile insurance policy would cancel if a future installment premium was not paid was ineffective cancellation notice. Under the policy, cancellation for nonpayment required at least ten days' notice after the premium became due and unpaid. The court reversed and remanded the summary judgment entered for Equity Insurance Company.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Hargrave, J.
JURISDICTION	Oklahoma
DECIDED	April 1, 2008
DOCKET	104456
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Equity Insurance Company brought a declaratory-relief action concerning coverage under Cleo Smith's automobile liability policy. The district court granted summary judgment for Equity. Smith appealed, and the Oklahoma Supreme Court retained the appeal under its accelerated-appeal procedure.
STANDARD OF REVIEW	De novo review of a summary-judgment order.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Cleo Smith v. Equity Insurance Company

TOPICS

insurance coverage · contract interpretation · insurance · appellate procedure · municipal law

PRACTICE AREAS

insurance law · contract law · appellate procedure · municipal law

QUESTIONS PRESENTED

1. Whether an insurer's notice stating that an automobile liability policy will automatically cancel on a future date if an installment premium is not paid constitutes effective notice of cancellation for nonpayment of premium under a policy requiring at least ten days' notice.

HOLDINGS

1. A notice stating that an automobile liability policy will cancel in the future if an installment premium is not paid is ineffective notice of cancellation for nonpayment of premium when the policy requires at least ten days' notice of cancellation.
2. Although the material facts were undisputed, summary judgment for Equity was improper because the policy's anticipatory cancellation notice did not effectively cancel the policy before the accident.

KEY QUOTATIONS

> *"Under the terms of the Equity policy, we find that effective notice of cancellation for nonpayment of premium cannot be given before the premium is due and unpaid."* (184 P.3d at 545)

> *"It is a notice of a future intent to cancel the policy if the premium is not paid by the given date."* (184 P.3d at 545)

FACTUAL BACKGROUND

Equity issued Cleo Smith a six-month automobile liability policy on April 3, 2006, after Smith paid an initial premium installment. The next day, Equity mailed an invoice stating that the next installment was due April 28 and that the policy would automatically cancel on May 3 at 12:01 a.m. if payment was not postmarked before that date. Smith did not pay by the stated dates, and at approximately 5:07 p.m. on May 3 he damaged a City of Jenks utility pole in a single-vehicle accident. Equity denied coverage on the ground that the policy had already cancelled.

PROCEDURAL HISTORY

After Equity denied coverage for damage caused by Smith's automobile accident, it filed a declaratory-relief petition in the Tulsa County District Court naming Smith and the City of Jenks as defendants. The trial court granted Equity summary judgment. The Oklahoma Supreme Court granted Smith's motion to retain the case, denied Equity's motion to strike or correct the record, and reversed and remanded.

DISPOSITION

```
reversed_and_remanded
```

REMAND INSTRUCTIONS

The judgment granting Equity Insurance summary judgment was reversed and the matter was remanded for further proceedings consistent with the holding that the anticipatory cancellation notice was ineffective.

CASES CITED

- Allen v. Lynn Hickey Dodge, 2001 OK 93, 39 P.3d 781
- Conn v. Motorist Mut. Ins. Co., 190 W. Va. 553, 439 S.E.2d 418 (1993)
- Hart v. Mutual Ins. Co., 268 Ark. 857, 597 S.W.2d 105 (Ark. App. 1980)
- Blair by Snider v. Perry County Mut. Ins. Co., 118 S.W.3d 605 (Mo. 2003)
- Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Person, 164 Ga. App. 488, 297 S.E.2d 80 (1982)
- Mackey v. Bristol West Ins. Services of California, 105 Cal. App. 4th 1247, 130 Cal. Rptr. 2d 536 (2003)
- Pearson v. Nationwide Mut. Ins. Co., 325 N.C. 246, 382 S.E.2d 745 (1989)
- Fisher v. Assoc. Underwriters, 294 Ill. App. 315, 13 N.E.2d 809 (1938)
- Priest v. Bankers' Life Association, 99 Kan. 295, 161 P. 631 (1916)
- Campbell v. Home Ins. Co., 628 P.2d 96 (Colo. 1981)
- Automobile Club Ins. Co. v. Donovan, 550 A.2d 622 (R.I. 1988)
- Carraco Oil Co. v. Mid-Continent Cas. Co., 484 P.2d 519 (Okla. 1971)
- K & K Food Services, Inc. v. S & H, Inc., 2000 OK 31, 3 P.3d 705
- Farris v. Commercial Union Fire Ins. Co., 176 Okla. 331, 55 P.2d 432 (1936)
- Bankers Reserve Life Co. v. Rice, 99 Okla. 184, 226 P. 324 (1924)
- Munóz v. New Jersey Automobile Full Ins. Underwriting Assn., 145 N.J. 377, 678 A.2d 1051 (1996)
- Farmers Ins. Exchange v. Lewis, 316 F. Supp. 1260 (E.D. Okla. 1970)
