

SUPREME COURT OF MISSOURI

Mendenhall v. Property & Casualty Insurance Co. of Hartford

375 S.W.3d 90 (Mo. banc 2012) · Decided July 31, 2012

OPINION

TEITELMAN, J.

RICHARD B. TEITELMAN, Chief Justice. Ruth Mendenhall appeals a summary judgment in favor of Property and Casualty Insurance Company of Hartford (Hartford) on her equitable garnishment claim seeking insurance coverage for the death of her husband, Len Mendenhall.

The trial court’s judgment was premised on the conclusion that Mr. Mendenhall was an “employee” under the terms of the Hartford policy and, therefore, was excluded from coverage. The judgment is reversed because Mr. Mendenhall was not an “employee” but was instead a “temporary worker” subject to coverage under the terms of the Hartford policy. FACTS In May 2006, Mr. Mendenhall interviewed for a job with the Family Center of Farmington, Inc. (Family Center).

The Family Center did not hire Mr. Mendenhall. However, the person who interviewed Mr. Mendenhall for the Family Center informed Jay Walker, the owner of the Family Center, that Mr. Mendenhall would be a good candidate for a job. Based on the Family Center’s recommendation, Mr. Walker hired Mr. Mendenhall to work for him personally at the cattle farm (farm) that Mr. Walker co-owned with his wife.

Mr. Mendenhall worked at the farm on an as-needed basis. Although Mr. Mendenhall was always paid by the farm, Mr. Walker occasionally asked Mr. Mendenhall to perform tasks for the Family Center. Mr. Walker also permitted Mr. Mendenhall to use a truck and trailer owned by the Family Center. This truck and trailer was covered under a business automobile liability policy (the Hartford policy) provided by Hartford and issued to the Family Center.

On March 8, 2007, Mr. Mendenhall was using the Family Center’s truck and trailer to haul rock for Mr. Walker at the farm. Mr. Mendenhall was killed when the truck overturned as he was unloading the rock. Mrs. Mendenhall filed a wrongful death suit against the Family Center and the Walkers.¹ Mrs. Mendenhall dismissed her claim against Mrs. Walker and obtained an \$840,000 judgment against Mr. Walker and a \$50,000 judgment against the Family Center.

Prior to the judgment, Mr. Walker and Mrs. Mendenhall entered an agreement pursuant to section 587.065, RSMo 2000, which provided that any judgment against Mr. Walker would be collected from the proceeds of the Hartford policy. Hartford denied any obligation to indemnify Mr. Walker for claims resulting from Mr. Mendenhall’s death. Mrs. Mendenhall then filed the underlying

action for equitable garnishment to satisfy the \$840,000 judgment under the coverage provided by the Family Center's Hartford policy.

The Hartford policy contains an exclusion from liability coverage for employees of the insured. The definition of "employee" specifically includes a "leased worker" but does not include a "temporary worker." These two terms are defined in the Hartford policy: "Leased worker" means a person leased to you by a labor leasing firm under an *92agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker." [[Image here]] "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

This policy language means that the dis-positive issue is whether Len Mendenhall was an "employee" or a "temporary worker." If Mr. Mendenhall was an "employee," there is no insurance coverage. If he was a "temporary worker," there is insurance coverage.

The trial court entered summary judgment for Hartford. The court concluded that Mr. Mendenhall was excluded from coverage because he was Mr. Walker's "employee." The trial court found that Mr. Mendenhall was not a covered "temporary worker" because he was not "furnished to" Mr. Walker by an employment service or similar organization. Mrs. Mendenhall appeals.

ANALYSIS "The interpretation of an insurance policy, and the determination whether coverage and exclusion provisions are ambiguous, are questions of law that this Court reviews de novo." *Bums v. Smith*, 303 S.W.3d 505, 509 (Mo. banc 2010). "Where, as here, the trial court granted summary judgment, this Court also applies a de novo standard of review." *Id.* Ambiguities in the meaning of an insurance policy are resolved in favor of the insured, and exclusionary clauses are strictly construed against the drafter.

Bums, 303 S.W.3d at 509. When resolving coverage ambiguities, this Court must apply the meaning that would be attached by an ordinary person of average understanding if purchasing insurance and resolve ambiguities in favor of the insured. *Jones v. Mid-Century Insurance Co.*, 287 S.W.3d 687, 690 (Mo. banc 2009). An ambiguity exists when a phrase is "reasonably open to different constructions." *Burns*, 303 S.W.3d at 509.

The parties agree that Mr. Mendenhall worked for Mr. Walker to meet seasonal or short-term workload conditions and that temporary workers are covered by the Hartford policy. There is also no dispute that the phrase "furnished to" requires the involvement of a third party. See *Gavan v. Bituminous Cas. Corp.*, 242 S.W.3d 718, 720-21 (Mo. banc 2008).

Therefore, the dispositive issue is whether Mr. Mendenhall was "furnished to" Mr. Walker by the Family Center so that he qualifies as a "temporary worker" subject to coverage under the Hartford

policy. Hartford asserts that the Family Center could not have furnished Mr. Mendenhall because the Family Center was not an employment agency and did not employ Mr. Mendenhall.

Mrs. Mendenhall asserts that an agency or employment relationship is unnecessary and that Mr. Mendenhall was “furnished to” Mr. Walker by Family Center’s referral. The issue, then, is the nature of the third party’s relationship with the prospective worker.

The term “furnished to” is not defined in the policy. When interpreting insurance policy language, courts give a term its ordinary meaning unless it plainly appears that a technical meaning was intended. *Farmland Indus., Inc. v. Republic Ins. Co.*, 941 S.W.2d 505, 508 (Mo. banc 1997). It does not appear plainly that the term “furnished to” has a precise technical meaning.

Therefore, the standard English dictionary definition governs. *Id.* *93 The standard definition of the word “furnish” is “to provide or supply with what is needed, useful or desirable.” Webster’s Third New International Dictionary of the English Language 923 (2002). Similarly, Black’s Law Dictionary defines “furnish” as “to supply, provide or equip, for accomplishment of a particular purpose.” Black’s Law Dictionary 675 (6th ed.

1990). In the context of this case, neither the word “furnish” nor its synonyms “provide” and “supply” necessarily require the Family Center and Mr. Mendenhall to have an employment or agency relationship to support a finding that the Family Center furnished Mr. Mendenhall to work for Mr. Walker.

The proposition that the phrase “furnished to” does not necessarily require an agency or employment relationship between the third party and the prospective worker can be tested by assuming, for the sake of argument, that the Family Center was an employment agency acting on behalf of Mr. Mendenhall. If that were the case, the fact remains that Mr. Mendenhall simply could have declined the job working for Mr. Walker.

Therefore, the existence of an agency relationship between the Family Center and Mr. Mendenhall is not a necessary or even a practically useful focal point for determining whether the Family Center furnished Mr. Mendenhall to Mr. Walker.

The more relevant consideration is the undisputed fact that Mr. Walker did not interview Mr. Mendenhall and relied solely on the Family Center’s referral in making his decision to hire Mr. Mendenhall. The Family Center’s referral supplied and provided Mr. Walker with the information he used to hire Mr. Mendenhall on an as-needed basis. Without the information furnished by the Family Center, a business owned solely by Mr. Walker, Mr. Walker would not have hired Mr. Mendenhall.

It was through the Family Center’s referral that Mr. Mendenhall was “furnished to” Walker as a temporary worker. The existence of an agency relationship between Mr. Mendenhall and the

Family Center was wholly irrelevant to Mr. Walker's decision to hire Mr. Mendenhall and, therefore, is not necessary to show that the Family Center furnished Mr. Mendenhall to work for Mr. Walker.

As such, the plain language meaning of the phrase "furnished to" plausibly can be interpreted to include situations such as this, where the employment decision is based solely on the third party referral. The ambiguity is illustrated further by the Hartford policy's definition of "leased worker," which, unlike the "temporary worker" definition, specifies a particular third party.

The definition specifically states that a "leased worker" is a person "leased to you by a labor leasing firm...." In contrast, the definition of "temporary worker" is not qualified by the existence of any agency or employment relationship. Hartford argues that an express reference to an agency or employment relationship is unnecessary because of the clear definition of "furnish," yet, as established above, the phrase "furnished to" does not necessarily require the furnisher to be an employment agency.

Therefore, the difference in the level of specificity between the two definitions is a relevant consideration. See *Nick's Brick Oven Pizza, Inc. v. Excelsior Ins. Co.*, 19 Misc.3d 736, 853 N.Y.S.2d 870, 873-74 (N.Y.Sup.Ct.2008); *Carl's Italian Rest v. Truck Ins. Exch.*, 183 P.3d 636, 640 (Colo.Ct.App.2007) (stating "[t]he 'leased worker' provision requires that the worker be furnished by a particular type of third party, while the 'temporary worker' provision requires involvement of any type of third party").

These differing views further indicate an ambiguity in the interpretation of "furnish" with respect to third parties. *94 Finally, as Hartford notes, there are cases holding that the phrase "furnished to" unambiguously requires that the worker be furnished to the employer from an employment agency or a similar service. See *Burlington Ins. Co. v. De Vesta*, 511 F.Supp.2d 281, 233 (D.Conn.2007); *Brown v. Ind. Ins.*

Co., 184 S.W.3d 528, 538 (Ky.2005). However, other courts have held that the phrase "furnished to" also encompasses simply referring a prospective worker to an employer. See *Nat'l Indem. Co. of S. v. Landscape Mgmt. Co., Inc.*, 963 So.2d 361, 363 (Fla.Dist.Ct.App.2007) (worker furnished by another employee); *Nick's Brick Oven Pizza*, 853 N.Y.S.2d at 872-73 (worker furnished by referral from friend of employer).

The fact that the phrase "furnished to" does not necessarily presuppose the existence of an agency relationship, combined with the definition of "leased worker" and the foregoing cases, means that the phrase "furnished to" is ambiguous as it is reasonably susceptible to alternate interpretations.

Therefore, under the facts of this case, the phrase "furnished to" is ambiguous and the policy should be construed against the insurer. Given the facts of this case and the policy language, Mr. Mendenhall was Mr. Walker's "temporary worker" and is covered by the Hartford policy.

The dissent asserts that providing coverage in this case is tantamount to a holding that one who recommends a potential employee to another must be considered to have furnished the employee. The issue is not whether the phrase “furnished to” necessarily includes referrals or recommendations. Instead, the issue is whether the average consumer would conclude that the phrase “furnished to” precluded coverage under the circumstance of this case.

As established above, under the facts of this case, the phrase “furnished to” is susceptible to plausible, alternative interpretations, and this ambiguity is resolved in favor of the insured. Therefore, the judgment is reversed, and the case is remanded. RUSSELL and BRECKENRIDGE, JJ., and MOBLEY, Sp.J., concur. STITH, J., dissents in separate opinion filed; FISCHER and PRICE, JJ., concur in opinion of STITH, J. DRAPER, J., not participating..

Because Mr. Mendenhall was employed in farm labor at the time of his death, he was not covered by workers' compensation. Section 287.090.1(1), RSMo Supp.2008.