STATE OF MICHIGAN

COURT OF APPEALS

DAVID GILBERT,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
April 10, 1995

No. 161703
LC No. 90-031673-CK

Before: Jansen, P.J., and Michael J. Kelly and Hood, JJ.

PER CURIAM.

This is a declaratory judgment action. Defendant appeals as of right from the January 14, 1993, judgment of the Wayne Circuit Court entered in favor of plaintiff. The trial court reformed the automobile insurance policy issued by defendant and determined that plaintiff had uninsured motorist coverage. Plaintiff was thus allowed to proceed to arbitration under the policy. We affirm.

Plaintiff first purchased his automobile insurance policy from defendant on January 18, 1989. Plaintiff informed the insurance agent, Linda Atkins, that he wanted full coverage except for rental car coverage, and that he wanted a deductible of $250. The policy issued did not contain uninsured motorist coverage. On February 3, 1989, plaintiff added another car to his policy. Again, the policy did not contain uninsured motorist coverage for either car. When plaintiff received his policy in the mail, he noticed that his name showed as "Gilbert R. Gilbert." Plaintiff telephoned Atkins to notify her of this mistake. Plaintiff otherwise did not read his insurance policy.

At the end of April 1989, plaintiff was involved in a car accident and he suffered injuries as a result. The driver of the other vehicle left the scene of the accident. Plaintiff contacted Atkins regarding the accident, and she informed plaintiff that he did not have uninsured motorist coverage. Plaintiff told Atkins that he thought he had purchased uninsured motorist coverage because he had requested full coverage except for car rental. Beginning with his November 1989 policy, plaintiff added uninsured motorist coverage.

Plaintiff filed the instant declaratory judgment action on December 13, 1990. A trial was held before the trial court to determine whether plaintiff had uninsured motorist coverage. In its factual findings, the trial court found that plaintiff requested full coverage except car rental, that plaintiff was not concerned with cost cutting, that plaintiff had a tenth grade education but could not read very well, and that plaintiff did not read the policy sheet or the declaration certificate. The trial court held that plaintiff's failure to read the policy did not insulate defendant from liability. The trial court concluded that plaintiff had requested and expected full coverage and it entered judgment in plaintiff's favor indicating that plaintiff had uninsured motorist coverage under his policy at the time of the accident.

An appellate court's review of a declaratory judgment is de novo. Taylor v Blue Cross & Blue Shield of Michigan, 205 Mich App 644, 649; 517 NW2d 864 (1994). However, the trial court's factual findings are reviewed under the clearly erroneous standard of review. Id.; MCR 2.613(C). A finding is clearly erroneous if, after a review of all the evidence, this Court is left with a definite and firm conviction that a mistake has been made. Beason v Beason, 435 Mich 791, 805; 460 NW2d 207 (1990).

In the instant case, it is clear that the trial court reformed the insurance policy to include uninsured motorist coverage. Plaintiff's policy, at the time of the accident, did not include uninsured motorist coverage. Further, plaintiff did not read the policy and so did not inform defendant that the policy inadvertently did not contain uninsured motorist coverage. Thus, we must determine whether the trial court properly reformed the policy to include uninsured motorist coverage.

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. Auto-Owners Ins Co v Churchman, 440 Mich 560, 566; 489 NW2d 431 (1992). The court must look at the contract as a whole and give meaning to all the terms. Id. Under contract principles, one who signs a contract cannot seek to invalidate it on the basis that he or she did not read it or thought its terms were different, absent a showing of fraud or mutual mistake. Sherman v DeMaria Bldg Co, 203 Mich App 593, 599; 513 NW2d 187 (1994). Thus, a mere failure to read an insurance policy does not prevent reformation of a contract based on mutual mistake. Mantua v Auto Club Ins Co, 206 Mich App 274, 280; 520 NW2d 380 (1994).

There was sufficient evidence presented by plaintiff of a mutual mistake to justify the trial court's reformation of the insurance policy. At trial, Atkins testified that errors were made on plaintiff's policy through her own fault. Atkins stated that she did not check the appropriate boxes on the policy authorization form indicating the deductible amounts, and that this was a mistake on her part. Atkins also indicated that she mistakenly entered the name "Gilbert R. Gilbert" in the computer instead of plaintiff's actual name. This information was entered on the same computer screen where all of plaintiff's information, including uninsured motorist coverage, was entered. Atkins also stated that the proper procedure would have been to explain uninsured motorist coverage to plaintiff if he indicated that he did not want it.

Further, plaintiff told Atkins that he wanted "full coverage" except car rental. Plaintiff is an unsophisticated purchaser of insurance, as are most buyers, and he did not understand that uninsured motorist coverage is not required under Michigan law. Rohlman v Hawkeye-Security Ins Co, 442 Mich 520, 522; 502 NW2d 310 (1993). However, plaintiff requested full coverage and Atkins stated that her usual selling procedure is to go "line by line" and have the customer respond to each item. Plaintiff testified that he did not recall Atkins asking him if he wanted uninsured motorist coverage, nor did she explain such coverage to him.

Accordingly, this evidence is sufficient to show that there was a mutual mistake made by plaintiff and Atkins such that uninsured motorist coverage was mistakenly not included in the insurance policy. Further, the fact that plaintiff did not pay on the premium (an additional five to six dollars every six months) is not dispositive. Because there was a mutual mistake, uninsured motorist coverage was not included in the policy and plaintiff failed to purchase it on the basis of a mistake. Thus, the insurance policy could still be reformed. Cf. Stein v Continental Casualty Co, 110 Mich App 410, 420-421; 313 NW2d 299 (1981).

The trial court's factual findings are not clearly erroneous, and the trial court did not err in reforming the insurance policy on the basis of mutual mistake. The trial court's judgment in plaintiff's favor is affirmed.

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Kelly
/s/ Harold Hood