REL: June 26, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180996

Kevin Crook

v.

Allstate Indemnity Company, The Barker Agency, and Allstate Insurance Company

Appeal from Tuscaloosa Circuit Court (CV-16-900626)

MENDHEIM, Justice.

Kevin Crook appeals a summary judgment entered by the Tuscaloosa Circuit Court in favor of Allstate Indemnity Company ("Allstate Indemnity"), Allstate Insurance Company

("Allstate Insurance"), and The Barker Agency (hereinafter collectively referred to as "the defendants"). We affirm the summary judgment.

Facts and Procedural History

Crook owns lake-front property in Tuscaloosa County. The property consists of a house, a bathhouse, a garage, a deck, and a boat dock. The deck is not directly connected to the house; an exterior stairway connects the house to the deck. The boat dock is, in turn, connected to the side of the deck opposite the stairway and house.[1] A portion of the boat dock is covered with a roof supported by pilings, but the boat dock has no walls.

In 2006, Crook, through The Barker Agency,[2] obtained property insurance on the house and other structures from Allstate Indemnity. Allstate Indemnity issued a policy to Crook ("the policy") and provided uninterrupted insurance coverage of Crook's house from 2006 through 2015. Crook's

[1]Crook maintains that the deck and the boat dock are essentially the same structure. See Crook's reply brief, p. 11. It is unclear why this is significant to Crook's argument.

[2]At that time, The Barker Agency was known as the Michael Gray Agency.

deposition testimony indicates that, during that time, although Crook was sent a renewal policy each year with the details of the policy and specific instructions to read the renewal policy and determine if the policy limits were sufficient, Crook was not aware of the actual policy limits provided by Allstate Indemnity and did not read the renewal notices. Crook answered in the affirmative when asked if he "simply trust[ed] that the limits supplied by [Allstate Indemnity were] exactly what [he] need[ed]."

The policy provided that the "limits of insurance" for "Coverage A Dwelling Protection" ("Coverage A") was $56,049 and for "Coverage B Other Structure Protection" ("Coverage B") was $11,455. The policy stated, in pertinent part:

> "Property we cover under Coverage A:
>
> "1. Your dwelling including attached structures. Structures connected to your dwelling by only a fence, utility line, or similar connection are not considered attached structures.
>
> "....
>
> "Property we cover under Coverage B:
>
> "1. Declarations separated from your dwelling by clear space.

> "2. Structures attached to your dwelling by only a fence, utility line, or similar connection."

The term "dwelling" is defined in the policy as "a one, two, three or four family building structure, identified as the insured property on the Policy Declarations, where you reside and which is principally used as a private residence." The term "building structure" is defined in the policy as "a structure with walls and a roof."

On February 12, 2015, Allstate Indemnity conducted an inspection of the property for underwriting purposes. After the inspection, on February 23, 2015, The Barker Agency sent Crook the following letter (Allstate Insurance's name was also on the letter):

> "Re: Property Inspection Results
>
> "As you may recall, we previously informed you of an upcoming inspection of [the property's] exterior. We have completed the inspection and want to share the results with you.
>
> "Congratulations! We did not find any issues that impact your current coverage* and you do not need to do anything further. If you have any questions about the inspection, please give us a call at the number below.
>
> "We value your business and hope you are satisfied with the insurance coverage we provide.

> Thank you for giving us the opportunity to help protect what's important to you.
>
> "_____
>
> > "*We want you to know that our inspection of your property is limited. It focused only on identifying certain types of hazards or conditions that might impact your future insurance coverage. It may not have identified some other hazards or conditions on your property."

On April 14, 2015, a storm damaged the deck and the boat dock; the amount of the damage caused "was at or greater than the coverage provided by" Coverage B. Crook reported the storm-caused damage. On April 24, 2015, Kevin Smith, a "claims service analyst" employed by Allstate Insurance, inspected the damage reported by Crook. Smith concluded that the deck and the boat dock had been damaged by the storm and that the damage was covered under Coverage B, rather than Coverage A. Accordingly, on April 28, 2015, Allstate Indemnity paid Crook the Coverage B policy limit of $11,455.

On June 7, 2016, Crook sued the defendants, asserting claims of breach of contract, bad-faith failure to pay a claim, negligent/wanton procurement of insurance, and estoppel.[3] Concerning Crook's breach-of-contract and bad-

[3]In his complaint, Crook asserted his claims against all the defendants. Before this Court, however, Crook makes

faith claims, Crook alleged that the damage to the deck and the boat dock should have been covered under Coverage A, which has a higher limit of insurance in the amount of $56,049. Concerning Crook's negligent/wanton-procurement-of-insurance claim, Crook alleged that he relied upon the defendants to provide adequate coverage for the property and that the defendants "knew or should have known that [Coverage B] ... would be insufficient to cover damages to [the] deck and [the] boat [dock]." Concerning his estoppel claim, Crook alleged that the defendants, in the February 23, 2015, letter set forth above, "assur[ed] [Crook] that his insurance coverage was sufficient" and that the defendants should have known that the alleged assurances in the February 23, 2015, letter "would cause [Crook] to not take further actions to procure additional or different insurance coverage." Crook asserted that the defendants "are estopped from asserting a position inconsistent with the representations in the February 23, 2015, letter."

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arguments as if certain claims were asserted against specific, and not all, defendants. For purposes of this opinion, we have treated Crook's claims in the same manner he has treated them before this Court.

On October 9, 2017, Allstate Indemnity and The Barker Agency filed separate motions for a summary judgment, and on September 27, 2018, Crook filed a response. Following a hearing, the circuit court entered a summary judgment in favor of Allstate Indemnity and The Barker Agency as to all claims against them on February 27, 2019.

On April 10, 2019, Allstate Insurance filed a motion for a summary judgment, and on July 24, 2019, Crook filed a response. Following a hearing, the circuit court entered a summary judgment in favor of Allstate Insurance as to all claims against it on July 29, 2019. The circuit court incorporated its February 27, 2019, order into the July 29, 2019, order and further stated that the policy "was issued by Allstate Indemnity ..., not Allstate Insurance ...; and that Allstate Indemnity ... ultimately investigated and issued payments on [Crook's] claim." Crook appealed.

Standard of Review

Our standard of review of a summary judgment is well settled:

> "'The standard of review applicable to a summary judgment is the same as the standard for granting the motion....' McClendon v. Mountain Top Indoor Flea Market, Inc., 601 So. 2d 957, 958 (Ala. 1992).

> "'A summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. The burden is on the moving party to make a prima facie showing that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. In determining whether the movant has carried that burden, the court is to view the evidence in a light most favorable to the nonmoving party and to draw all reasonable inferences in favor of that party. To defeat a properly supported summary judgment motion, the nonmoving party must present "substantial evidence" creating a genuine issue of material fact -- "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." Ala. Code 1975, § 12-21-12; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).'
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> "Capital Alliance Ins. Co. v. Thorough-Clean, Inc., 639 So. 2d 1349, 1350 (Ala. 1994). Questions of law are reviewed de novo. Alabama Republican Party v. McGinley, 893 So. 2d 337, 342 (Ala. 2004)."

Pritchett v. ICN Med. Alliance, Inc., 938 So. 2d 933, 935 (Ala. 2006).

Discussion

First, Crook argues that the circuit court erred in entering a summary judgment in favor of Allstate Indemnity on Crook's breach-of-contract claim. Crook argues that "[t]he

plain language of the policy provides that the deck [and] boat [dock are] covered under Coverage A," rather than Coverage B. Crook's brief, p. 34.

This Court applies the following principles of construction in interpreting an insurance contract:

> "The rules of contract interpretation are well settled. 'The issue whether a contract is ambiguous or unambiguous is a question of law for a court to decide.' State Farm Fire & Cas. Co. v. Slade, 747 So. 2d 293, 308 (Ala. 1999).
>
> > "'"If a word or phrase is not defined in [an insurance] policy, then the court should construe the word or phrase according to the meaning a person of ordinary intelligence would reasonably give it. The court should not define words it is construing based on technical or legal terms."
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> "'Safeway Ins. Co. of Alabama, Inc. v. Herrera, 912 So. 2d 1140, 1143 (Ala. 2005) (citations omitted).'
>
> "Travelers Cas. & Sur. Co. v. Alabama Gas Corp., 117 So. 3d 695, 700 (Ala. 2012).
>
> > "'"'When analyzing an insurance policy, a court gives words used in the policy their common, everyday meaning and interprets them as a reasonable person in the insured's

position would have understood them. Western World Ins. Co. v. City of Tuscumbia, 612 So. 2d 1159 (Ala. 1992); St. Paul Fire & Marine Ins. Co. v. Edge Mem'l Hosp., 584 So. 2d 1316 (Ala. 1991). If, under this standard, they are reasonably certain in their meaning, they are not ambiguous as a matter of law and the rule of construction in favor of the insured does not apply. Bituminous Cas. Corp. v. Harris, 372 So. 2d 342 (Ala. Civ. App. 1979). Only in cases of genuine ambiguity or inconsistency is it proper to resort to rules of construction. Canal Ins. Co. v. Old Republic Ins. Co., 718 So. 2d 8 (Ala. 1998). A policy is not made ambiguous by the fact that the parties interpret the policy differently or disagree as to the meaning of a written provision in a contract. Watkins v. United States Fid. & Guar. Co., 656 So. 2d 337 (Ala. 1994). A court must not rewrite a policy so as to

> include or exclude coverage that was not intended. Upton v. Mississippi Valley Title Ins. Co., 469 So. 2d 548 (Ala. 1985).'
>
> "'"B.D.B. v. State Farm Mut. Auto. Ins. Co., 814 So. 2d 877, 879-80 (Ala. Civ. App. 2001). However, if a provision in an insurance policy is found to be genuinely ambiguous, 'policies of insurance should be construed liberally in respect to persons insured and strictly with respect to the insurer.' Crossett v. St. Louis Fire & Marine Ins. Co., 289 Ala. 598, 603, 269 So. 2d 869, 873 (1972)."
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> "'State Farm Mut. Auto. Ins. Co. v. Brown, 26 So. 3d 1167, 1169-70 (Ala. 2009)....'
>
> "Travelers, 117 So. 3d at 699-700 (emphasis omitted)."

St. Paul Fire & Marine Ins. Co. v. Britt, 203 So. 3d 804, 810-11 (Ala. 2016).

As set forth above, the policy states that Coverage A applies to Crook's "dwelling including attached structures. Structures connected to your dwelling by only a fence, utility line, or similar connection are not considered attached structures." It is undisputed that the house is a dwelling and that the deck and the boat dock are structures; the issue

to be decided is whether those structures are "attached structures." Crook argues that the exterior staircase attaches the deck to the house and that the deck, in turn, which is attached to the boat dock, attaches the boat dock to the house. Accordingly, Crook argues, Coverage A, rather than Coverage B, applies to cover the damage to the deck and the boat dock. The defendants argue that the damage is covered by Coverage B, which applies to "[s]tructures ... separated from your dwelling by clear space." The defendants argue that the deck and the boat dock are separated from the dwelling by "clear space," so as to qualify only for Coverage B.

No Alabama appellate court has published a decision interpreting the particular policy language at issue. As a result, the parties have cited various cases from foreign jurisdictions in making their arguments. We find Dahms v. Nodak Mutual Insurance Co., 920 N.W.2d 293 (N.D. 2018), the most instructive; in that case, the Supreme Court of North Dakota summarized and addressed all the authorities relied upon by the parties in the present case. In Dahms, the insureds had a property-insurance policy identical to the policy at issue in this case in all material respects:

> "A. Coverage A – Dwelling
>
> "1. We cover:
>
> "a. The dwelling on the 'residence premises' shown in the Declarations, including structures attached to the dwelling; ...
>
> "....
>
> "B. Coverage B – Other Structures
>
> "1. We cover other structures on the 'residence premises' set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection."

Dahms, 920 N.W.2d at 295. The property insured included a dwelling and a detached garage. The insureds constructed a deck between the dwelling and the garage, connecting the two structures. It was undisputed that the deck was attached to the dwelling and to the garage. Subsequently, the garage was completely destroyed by a fire.

The insurer determined that the loss was covered under Coverage B of the insureds' policy and paid the insureds the policy limit of that coverage, which did not cover the total amount of damage suffered by the insureds. The insureds disagreed that Coverage B applied and sued the insurer,

claiming that Coverage A of the insureds' policy, which provided greater coverage, applied "because the garage was 'attached' to their dwelling by the deck." 920 N.W.2d at 296. The trial court ruled in favor of the insurer, and the insureds appealed.

On appeal, the Supreme Court of North Dakota affirmed the trial court's judgment. In so doing, the Supreme Court of North Dakota provided the following analysis of the relevant authorities cited by the parties in the present case:

> "Whether Coverage A or Coverage B insurance policy limits apply under the circumstances present in this case is a question of first impression in North Dakota. The parties do not cite, and we have not found, any cases construing similar insurance policy provisions from other jurisdictions that are factually on point. In deciding this issue the district court found persuasive a hypothetical posed by the Texas Supreme Court in Nassar v. Liberty Mut. Fire Ins. Co., 508 S.W.3d 254, 260 (Tex. 2017):
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> > "'To illustrate using a hypothetical, a stand-alone barn on a residence premises set apart from the dwelling by clear space would clearly be covered under subsection (2). Yet without the second sentence in subsection (2), a barn that was connected to the dwelling by only a fence would qualify as a "structure attached to the dwelling." This is because the fence, acting as a "structure attached to the dwelling" and a "connection" to the barn that would otherwise be "set apart by clear space," acts to negate the clear space

> requirement that places the barn neatly in the first sentence of subsection (2). An insured could simply use some fencing (or a "utility line or similar connection") and attach his or her dwelling to every barn, garage, or other building on the residence premises and secure coverage under subsection (1) instead of subsection (2). What protects the insurer from an insured determined to secure coverage for his or her other structures in such a way? The second sentence of subsection (2) provides the answer, and it does so with the distinction between "dwelling" and "other structures." In the above illustration, applying the second sentence of subsection (2) would cause the barn, connected to the dwelling by only a fence, to not be considered "attached to the dwelling" but rather as effectively "separated by clear space." The second sentence of subsection (2) operates to prevent a fence (or similar connection) attached to the dwelling from doing exactly what the court of appeals contemplated the Nassars' interpretation would do: cause structures attached to the fence to be covered under subsection (1). Stated differently, the first sentence of subsection (2) identifies what is to be covered, and the second sentence limits that coverage. Applying this interpretation to our hypothetical, the barn would be covered as an "other structure" even though it is connected to the dwelling by a fence.'

"Courts in other jurisdictions construing nearly identical policy language are in accord and have concluded, as did the district court here, that decks and concrete patios connected to a dwelling and other structures constitute 'clear space' which do not functionally differ from a lawn or garden,

rendering Coverage B limits applicable. The most extended discussion of the issue appears in Porco v. Lexington Ins. Co., 679 F. Supp. 2d 432, 434 (S.D.N.Y. 2009), which involved an insured's attempt to claim Coverage A limits applied to damage to a swimming pool connected to the dwelling by a patio, stairs, and a pool deck, none of which was covered by a roof. The pool's filtration system was located in the dwelling and was connected to the pool by pipes. Id. The court relied on ordinary dictionary definitions of 'attached,' meaning '"joined or fastened to something,"' and 'connected,' meaning '"joined or linked together,"' to resolve the issue. Id. at 437. The court determined the language used in Coverage A and Coverage B was not ambiguous and explained:

> "'The plain language of "attached" renders unpersuasive Plaintiff's claim that the dwelling is connected to the pool via the back patio, the steps, and the pool deck. In essence, Plaintiff asserts that because the house is "connected to" the patio, and the patio is "connected to" the steps, and the steps are "connected to" the pool deck, and the pool deck is "connected to" the pool, by some transitive property, the pool is "attached" to the house and, therefore, Coverage A applies. If the patio is joined or fastened to the dwelling, as it would seem to be, then that might distinguish the patio from a lawn or other obviously clear space separating the house from other structures. However, a dwelling might well be connected to a patio, and the patio to a walkway, and a walkway to a dog house or a mail box, but it would be absurd to conclude that the dog house and mail box are "attached" to the dwelling. Plaintiff's implicit argument that manmade structures that are all connected to each other have

> a property of being "attached" must, therefore, be limited in some way.
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> "'That limitation is found in the language of the Policy as applied to the relationship between the structure at issue and the dwelling. ... Even granting that the patio and stairs are attached to the dwelling and that the pool deck is attached to the pool, it strains the ordinary use of "attached" to argue that the steps, fence, and elevation do not set the dwelling apart from the pool. Put another, simpler way, the pool is indisputably not joined or fastened to the dwelling, and the fact that the pool deck is between the stairs and the pool, even if they touch each other, does not change the analysis.'

"Id. at 438. The court reasoned that 'the pool deck is clear space separating the dwelling (even if defined to include the stairs from the back patio) from the swimming pool' because the 'Court is at a loss to understand how cement is any more of a restriction of the space than grass would be.' Id. at 439. The court granted summary judgment concluding the pool was an 'other structure' and Coverage B applied. Id. at 441.

"Two unreported decisions applying the same policy language are in accord. See Mentesana v. State Farm Fire & Cas. Co., No. 07-0456-CV-W-ODS [May 28, 2008] (W.D. Mo. 2008) [(not selected for publication in F. Supp.)] ('Plaintiff's pool and waterfall are separated from his house by clear space. While this clear space is a concrete patio, rather than grass, it still provides separation from the house. Plaintiff's interpretation ... would allow for any structure to be brought within the "Dwelling" coverage merely by placing it on a concrete slab and connecting that slab to the foundation of the house.'); Arch v. Nationwide Mut.

> Fire Ins. Co., CIV. A. No. 88-5421 [Nov. 10, 1988] (W.D. Pa. 1988) [(not selected for publication in F. Supp.)] (unroofed twelve-foot concrete patio between pool and dwelling was clear space because 'a patio merely comprises part of one's yard as does any lawn or garden').
>
> "The [insureds] rely on Lazechko v. Auto Owners Ins. Co., No. 276111 [July 10, 2008] (Mich. Ct. App. 2008) [(unpublished decision)], where the court ruled Coverage A limits applied to a garage connected to the dwelling by a breezeway based on a dictionary definition of breezeway as '"an open-sided roofed passageway for connecting two buildings, as a house and a garage."' Id. But the present case does not involve a roofed breezeway, and the insured in Lazechko was attempting to invoke Coverage B limits to obtain additional insurance proceeds."

920 S.W.2d at 297. Based on the above analysis, the Supreme Court of North Dakota affirmed the trial court's judgment, concluding that the damage to the insureds' garage was covered under Coverage B of the insureds' policy, rather than Coverage A.

As is made clear by the above analysis, the various jurisdictions that have considered the issue before us have determined that Coverage B applies to cover damage to an "other structure" when there is "clear space" between the dwelling and the other structure, even if the dwelling and the

damaged other structure are connected by a structure such as a deck.

In the present case, the deck is connected to the house by an exterior staircase. It is evident from the pictures provided by the parties that there is "clear space" between the house and the deck and the boat dock. The fact that the exterior staircase spans the clear space between the house and the deck and the boat dock is inconsequential according to Dahms. The fact remains that neither the deck nor the boat dock is attached to the house, but there exists clear space between the structures.[4] Accordingly, applying the plain language of the policy, the circuit court properly determined that the damage to Crook's deck and boat dock is covered under Coverage B, rather than Coverage A.[5]

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[4]Crook notes that Smith's deposition testimony indicates that the exterior staircase and the deck do not constitute "clear space" because "[t]here's something there." However, as thoroughly explained above, the simple fact that there is "something there" does not mean that there is not "clear space" as that term is used in the policy. The interpretation of the policy is a matter of law to be decided by the Court, not a matter of fact to be decided by Smith. Smith's testimony in this regard is irrelevant.

[5]Crook notes that, in determining that Coverage B applied to the damage in the present case, the circuit court relied upon the fact that the deck and the boat dock are actually located on public land and that Crook's deck does not provide

Next, Crook argues that the circuit court erred in entering a summary judgment in favor of Allstate Indemnity on Crook's bad-faith claim. As Crook notes in his brief, the following elements must be established to prevail on a bad-faith claim:

> "(a) an insurance contract between the parties and a breach thereof by the defendant;
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> "(b) an intentional refusal to pay the insured's claim;
>
> "(c) the absence of any reasonably legitimate or arguable reason for that refusal (the absence of a debatable reason);
>
> "(d) the insurer's actual knowledge of the absence of any legitimate or arguable reason;
>
> "(e) if the intentional failure to determine the existence of a lawful basis is relied upon, the plaintiff must prove the insurer's intentional failure to determine whether there is a legitimate or arguable reason to refuse to pay the claim."

National Sec. Fire & Cas. Co. v. Bowen, 417 So. 2d 179, 183 (Ala. 1982) (emphasis added). The very first element of a bad-faith claim is that there must be a breach of an insurance

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structural support to the house. See Crook's brief, pp. 44-46. Crook argues that these facts are irrelevant to interpreting the plain language of the policy. We agree, and we have not relied upon those facts in our analysis. As demonstrated above, however, the circuit court's judgment may be affirmed without reliance upon those superfluous facts.

contract between the parties. As discussed above, Crook has failed to establish that the circuit court erred in determining that Allstate Indemnity did not breach the policy. Crook has thus failed to establish the first element of his bad-faith claim. Accordingly, we affirm the circuit court's summary judgment in favor of Allstate Indemnity as to Crook's bad-faith claim.

Next, Crook argues that, even if Allstate Indemnity did not breach the policy by applying Coverage B, "Crook has trial-worthy claims [against Allstate Indemnity and The Barker Agency] for negligence in procurement of insurance, negligent inspection, and estoppel." Crook's brief, p. 50. Crook's negligence arguments appear to be intertwined. He essentially argues that Allstate Indemnity and The Barker Agency negligently inspected the property, which caused them to negligently procure the policy. In other words, Crook appears to be arguing that the alleged negligent inspection led Allstate Indemnity to provide an inadequate limit for Coverage B. Based on Crook's argument, the alleged negligent inspection matters only insofar as it informed the policy limits. Although Crook has divided his negligence claim into

two separate theories, the gravamen of Crook's negligence claim is one of negligent procurement of insurance, and we will treat it as such. Furthermore, we note that Crook does not cite this Court to any authority indicating that such negligence theories constitute separate claims.

In Alfa Life Insurance Corp. v. Colza, 159 So. 3d 1240, 1248 (Ala. 2014), this Court, relying on Kanellis v. Pacific Indemnity Co., 917 So. 2d 149 (Ala. Civ. App. 2005), set forth the elements of a negligent-procurement claim and also noted the applicability of the doctrine of contributory negligence to such a claim, as follows:

> "In Kanellis v. Pacific Indemnity Co., 917 So. 2d 149, 155 (Ala. Civ. App. 2005), the Court of Civil Appeals set forth the elements a plaintiff asserting a negligent-procurement claim is required to establish:
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> > "'Like any negligence claim, a claim in tort alleging a negligent failure of an insurance agent to fulfill a voluntary undertaking to procure insurance ... requires demonstration of the classic elements of a negligence theory, i.e., "(1) duty, (2) breach of duty, (3) proximate cause, and (4) injury." Albert v. Hsu, 602 So. 2d 895, 897 (Ala. 2002). Under Alabama law, however, contributory negligence is a complete defense to a claim based on negligence. Mitchell v. Torrence Cablevision USA, Inc.,

> 806 So. 2d 1254, 1257 (Ala. Civ. App. 2000).'"

Crook argues that Allstate Indemnity and The Barker Agency negligently procured the insurance limits of the policy. Crook states that he relied upon the expertise of Allstate Indemnity and The Barker Agency in setting the insurance limits and that they negligently failed to properly set those limits as evidenced by the fact that the policy limits of Coverage B were inadequate to fully compensate him for the damage to the deck and the boat dock.

The defendants, on the other hand, argue that Crook was contributorily negligent. In Colza, this Court stated:

> "With regard to establishing contributory negligence as a matter of law, this Court has stated:
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> > "'The question of contributory negligence is normally one for the jury. However, where the facts are such that all reasonable persons must reach the same conclusion, contributory negligence may be found as a matter of law. Brown [v. Piggly-Wiggly Stores, 454 So. 2d 1370, 1372 (Ala. 1984)]; see also Carroll v. Deaton, Inc., 555 So. 2d 140, 141 (Ala. 1989).
> >
> > "'To establish contributory negligence as a matter of law, a defendant seeking a [judgment as a matter of law] must show that the plaintiff put himself in danger's way and that the plaintiff had a conscious appreciation of the danger at the moment

> the incident occurred. See H.R.H. Metals, Inc. v. Miller, 833 So. 2d 18 (Ala. 2002); see also Hicks v. Commercial Union Ins. Co., 652 So. 2d 211, 219 (Ala. 1994). The proof required for establishing contributory negligence as a matter of law should be distinguished from an instruction given to a jury when determining whether a plaintiff has been guilty of contributory negligence. A jury determining whether a plaintiff has been guilty of contributory negligence must decide only whether the plaintiff failed to exercise reasonable care. We protect against the inappropriate use of a summary judgment to establish contributory negligence as a matter of law by requiring the defendant on such a motion to establish by undisputed evidence a plaintiff's conscious appreciation of danger. See H.R.H. Metals, supra.'
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> "Hannah v. Gregg, Bland & Berry, Inc., 840 So. 2d 839, 860–61 (Ala. 2002)."

Colza, 159 So. 3d at 1248-49.

In Colza, this Court, relying upon the Court of Civil Appeals' decision in Kanellis, supra, held that the doctrine of contributory negligence applies in the context of an insured's failure to read an insurance contract. A discussion of these cases is helpful.

In Kanellis, Gus and Maria Kanellis engaged the service of an insurance agent to obtain from an insurance company automobile insurance for their vehicle. The agent was able to

secure automobile insurance for the Kanellises' vehicle, a 2001 Porsche 911 valued at $121,000. It is undisputed that the Kanellises did not read the insurance policy. Subsequently, the Kanellises' vehicle was damaged, and they filed a claim. The insurance company paid to repair the Kanellises' vehicle, but the insurance company did not pay for the alleged diminution of the overall value of the vehicle as a result of the repaired damage. The Kanellises' insurance policy did not provide for such coverage. Accordingly, the Kanellises sued the agent, among others, asserting a claim of negligent procurement of insurance. The trial court ruled in favor of the Kanellises.

On appeal, the agent argued that the Kanellises had been contributorily negligent based on their failure to read the insurance policy and to understand the specific coverages and limits set forth in the policy. The agent argued:

> "[H]ad the Kanellises read their policy, they would have been placed on notice that the ... policy procured for them by [the agent] did not provide coverage for diminution in value resulting from a covered loss. Therefore, argue[s] [the agent], the Kanellises' failure to discover that the ... policy did not provide coverage for consequential diminution in their Porsche's value resulting from a covered collision amounts to contributory negligence as a matter of law."

Kanellis, 917 So. 2d at 154. The Court of Civil Appeals agreed. The Court of Civil Appeals stated:

> "Foremost [Insurance Co. v. Parham, 693 So. 2d 409 (Ala. 1997),] describes Hickox [v. Stover, 551 So. 2d 259 (Ala. 1989),] as having altered the law so as to 'eliminate[] the general duty on the part of a person to read the documents received in connection with a particular transaction.' Foremost, 693 So. 2d at 421. As Foremost indicates, the abrogation of that general duty in Hickox was a 'deviat[ion] from this State's public policy' (id.); moreover, that abrogation undercut the legal basis for the presumption that 'a person receiving a written instrument in the transaction of business, as, for example, the ... recipient of an insurance policy, is acquainted with its contents.' 31A C.J.S. Evidence § 192 (1996) (footnotes omitted); see also Hartford Fire Ins. Co. v. Shapiro, 270 Ala. 149, 155, 117 So. 2d 348, 354 (1960) (if an insurance policy is accepted by the insured, the insured is bound thereby despite divergence from preliminary negotiations, because 'an insured is presumed to be familiar with the provisions of his policy'). Post-Foremost, it is again the law that '[a]n insured who is competent in intelligence and background to understand insurance policy language is charged with knowledge of language in a policy received by that insured.' Allstate Ins. Co. v. Ware, 824 So. 2d 739, 745 (Ala. 2002)."

917 So. 2d at 154.

With the above principles established, the Court of Civil Appeals determined that the Kanellises' insurance policy did not provide coverage for a diminution of the value of the vehicle as a result of a covered loss. Moreover, the Court of

Civil Appeals stated that "the Kanellises adduced no evidence that would tend to indicate that they were anything less than 'competent in intelligence and background to understand insurance policy language.' Allstate Ins. Co. [v. Ware], 824 So. 2d [739] at 745 [(Ala. 2002)]." Kanellis, 917 So. 2d at 155. Finally, the Court of Civil Appeals concluded

> "that in light of the clear language of the ... policy issued to the Kanellises, the record is susceptible only to the conclusion that, as a matter of law, the Kanellises '"put [themselves] in danger's way"' and had a '"conscious appreciation of the danger"' of suffering a monetary loss in the event of a collision involving the Porsche automobile resulting in a diminution of the value of the Porsche. See Hannah v. Gregg, Bland & Berry, Inc., 840 So. 2d 839, 860 (Ala. 2002)."

Kanellis, 917 So. 2d at 155.

This Court relied upon Kanellis in Colza. In Colza, Dante Colza submitted an application for a life-insurance policy to an insurance company, naming his wife, Kimberly Colza, as the beneficiary of the applied-for policy. An agent of the insurance company helped Dante complete the application. Upon completion of the application, the insurance company provided Dante with documents that indicated that several conditions had to be met before the life-insurance policy went into effect. It is undisputed that the

conditions were not met before Dante's death; the insurance company, accordingly, did not pay Kimberly the benefit defined in the life-insurance policy. Kimberly sued the insurance company and the agent, asserting, among other things, a claim of negligent procurement. The trial court ruled in favor of Kimberly on this claim, and the agent appealed.

Before this Court, the agent, relying upon Kanellis, argued that, regardless of whether he was negligent in procuring the life-insurance policy, the Colzas were contributorily negligent because they failed to read the relevant documents and to meet the requirements for the life-insurance policy to go into effect clearly set forth therein. This Court summarized and relied upon Kanellis:

> "In ... Kanellis, ... the Court of Civil Appeals held that an insurance agency and its agent were entitled to a judgment as a matter of law on the plaintiffs' negligent-procurement claim because the insurance policy issued to the plaintiffs clearly stated the extent of the coverage provided by the issued policy and the plaintiffs should have therefore been aware that the policy did not provide the coverage they subsequently alleged that the insurance agent failed to procure. 917 So. 2d at 154-55. Thus, the Court of Civil Appeals reasoned, a finding of contributory negligence as a matter of law was warranted for the following reason:
>
> > "'[I]n light of the clear language of the [insurance] policy issued to the

> Kanellises, the record is susceptible only to the conclusion that, as a matter of law, the Kanellises "'put [themselves] in danger's way'" and had a "'conscious appreciation of the danger'" of suffering a monetary loss [if the event the Kanellises allege they sought insurance to protect themselves from occurred].'
>
> "917 So. 2d at 155. Applying Kanellis to the facts of this case, [the agent] argues that the [documents] apprised the Colzas that there was no guarantee of immediate coverage based on Dante's application for coverage and that they accordingly should have had a conscious appreciation of the danger they faced if Dante died before a completed policy issued."

Colza, 159 So. 3d at 1249-50. This Court concluded:

> "The documents in this case clearly apprised the Colzas that Dante was not guaranteed immediate coverage upon submitting his application for life insurance to [the agent]. By not reading the documents, they took a risk and put themselves in danger's way. We do not think it unreasonable to conclude as a matter of law that, in this day and age, any adult of sound mind capable of executing a contract necessarily has a conscious appreciation of the risk associated with ignoring documents containing essential terms and conditions related to the transaction that is the subject of the contract.[9] Thus, we agree with the rationale of the Court of Civil Appeals in Kanellis and hold that, because the Colzas '"'put [themselves] in danger's way'" and had a "'conscious appreciation of the danger'" of suffering a monetary loss,' Kanellis, 917 So. 2d at 155, in the event Dante died before the conditions for immediate coverage were met, any negligent-procurement claim is barred by the doctrine of contributory negligence.

"_____

"[9]Indeed, it would seem more unreasonable to allow plaintiffs to prevail on negligent-procurement claims in spite of their failure to read documents that put them on notice of the extent of their insurance coverage when that same failure to read already bars a fraud or breach-of-contract claim based on the same essential facts. See, e.g., Locklear Dodge City, Inc. v. Kimbrell, 703 So. 2d 303, 306 (Ala. 1997) ('[The plaintiff] is capable of reading; she simply chose not to read this contract because her husband was ill and because she trusted [the defendant]. In light of these factors, it is understandable that [she] might choose not to read the contract before signing it. She took a risk. However, [she] should not be excused from her contractual responsibilities because she took that risk. To hold otherwise would turn the concept of "sanctity of contract" upside down.'). See also Nance v. Southerland, 79 So. 3d 612, 619 (Ala. Civ. App. 2010) (recognizing that 'a party capable of reading and understanding English given the opportunity to review an insurance application cannot avoid the legal consequences of signing that document, indicating his or her assent to its terms on the basis that he or she did not read it'). Nothing in the evidence established that Dante requested to review the application and that Morris denied him that opportunity."

Colza, 159 So. 3d at 1252-53.

In the present case, it is undisputed that Crook did not read the policy or the numerous policy-renewal notices sent to him from 2006 to 2015 that explicitly set forth the policy limits and explicitly requested that he read them. Had he done so, Crook would have discovered that the policy limit for

Coverage B was only $11,455 and could have, had he desired, requested additional coverage. Crook failed to do so and, thus, "'"put [himself] in danger's way"' and had a '"conscious appreciation of the danger"' of suffering a monetary loss." Kanellis, 917 So. 2d at 155. Crook was contributorily negligent as a matter of law.

Crook argues that "his failure to review his policy limits is irrelevant because nothing in the coverage limits informed Crook of how Allstate Indemnity classified [the] deck [and the boat dock]." Crook's brief, p. 53. Essentially, Crook argues that he could not have been contributorily negligent for failing to read the policy because, he says, the policy did not indicate whether Coverage A or Coverage B applied to the deck and the boat dock. However, as explained above, the plain language of the policy indicates that Coverage B applies to the deck and the boat dock because those structures are not attached to the dwelling. Crook's argument is not convincing.

Accordingly, we affirm the circuit court's summary judgment in favor of Allstate Indemnity and The Barker Agency

as to Crook's negligence claim against Allstate Indemnity and The Barker Agency.[6]

Next, Crook argues that the circuit court erred in granting Allstate Indemnity's summary-judgment motion as to his estoppel claim. In his estoppel claim, Crook alleged that Allstate Indemnity is estopped from taking a position inconsistent with its February 23, 2015, correspondence with Crook. In the February 23, 2015, letter, which is set forth in full above, Crook was informed that an inspection of the property had been completed and that no issues had been discovered impacting his current coverage. The letter further expressly stated that the "inspection of [the] property [was] limited. It focused only on identifying certain types of hazards or conditions that might impact [Crook's] future insurance coverage." According to Crook, he relied upon the February 23, 2015, letter as a representation from Allstate

[6]Crook argues that the doctrine of contributory negligence is not available to The Barker Agency because, in its internal records, The Barker Agency had noted that there were only two "other structures," the bathhouse and the garage. However, there is nothing indicating that that information was ever communicated to Crook or that he relied upon that information. Further, Crook provides no analysis or authority indicating that that fact strips The Barker Agency of its ability to argue that Crook was contributorily negligent. Crook's argument is not supported by authority and is not convincing.

Indemnity that the insurance limits of his policy were adequate. Crook claims that Allstate Indemnity could not, after making such an assertion in the February 23, 2015, letter, later refuse to provide coverage under Coverage A for the damage to the deck and the boat dock.

Crook's argument in this regard before this Court is very brief. Crook cites authority to indicate that the doctrine of estoppel applies "against an insurer to preclude the insurer from denying coverage in a case where the insurance policy issued by the insurer did not cover the claim of the insured but where the insurer's agent mistakenly thought and represented that there was coverage at the time of the policy issuance." Crook's brief, pp. 60-61 (citing Fidelity & Cas. Co. of New York v. Watts Realty Co., 500 So. 2d 1126 (Ala. Civ. App. 1986)). After setting forth that authority, Crook's entire argument is as follows: "Crook's estoppel claim arises from the February 23, 2015, letter ... that told Crook that his property inspection had been completed and that 'we did not find any issues that impact your current coverage.'" Crook's brief, p. 62. Crook gives no further explanation of his argument.

Crook's argument does not demonstrate reversible error on the part of the circuit court. First, Crook does not even set forth the legal standard for demonstrating estoppel that he is required to present on appeal. Second, no assurance was made in the February 23, 2015, letter that the insurance limits of Coverage B would cover all possible damage to his deck and/or boat dock. In fact, Allstate Indemnity sent Crook notices every year with the actual insurance limits of Coverage B and specifically asked him to read them, which he admittedly never did. Allstate Indemnity very clearly informed Crook of his policy limits; Crook simply chose ignorance. Crook's argument does not satisfy Rule 28(a)(10), Ala. R. App. P.,[7] and is not based on the complete factual picture of this case. Accordingly, we affirm the circuit court's summary judgment in favor of Allstate Indemnity as to Crook's estoppel claim.

Lastly, Crook argues that the circuit court erred in granting Allstate Insurance's summary-judgment motion. Crook's claims against Allstate Insurance are the same as

[7]Rule 28(a)(10) requires that an appellant present "[a]n argument containing the contentions of the appellant/petitioner with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on."

those against Allstate Indemnity and The Barker Agency; in fact, the circuit court incorporated its February 27, 2019, order granting Allstate Indemnity's and The Barker Agency's summary-judgment motions into its order granting Allstate Insurance's summary-judgment motion. We have provided extensive analysis of Crook's arguments explaining that the plain language of the policy indicates that Allstate Indemnity properly applied Coverage B to the damage to the deck and the boat dock, that Crook was contributorily negligent, and that the doctrine of estoppel does not apply to bar Allstate Indemnity from providing coverage under Coverage B. Crook raises no new theory of breach of contract, negligence, or estoppel against Allstate Insurance; he simply argues that Allstate Insurance is also liable because Smith, an employee of Allstate Insurance, determined that Coverage B, rather than Coverage A, applied to the damage to the deck and the boat dock and because Allstate Insurance's name was on the February 23, 2015, letter, which forms the basis of his estoppel claim. However, as thoroughly explained above, Crook has failed to demonstrate that the circuit court erred in any respect. Accordingly, for the reasons set forth above, we

affirm the circuit court's summary judgment in favor of Allstate Insurance.

Conclusion

Based on the foregoing, we affirm the circuit court's summary judgment in favor of Allstate Indemnity, The Barker Agency, and Allstate Insurance.

AFFIRMED.

Parker, C.J., and Bolin, Wise, Bryan, Sellers, and Mitchell, JJ., concur.

Shaw and Stewart, JJ., concur in the result.