ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 08-676

	Opinion Delivered FEBRUARY 25, 2009
NICHOLAS DUGAN and DEANNA DUGAN APPELLANTS	APPEAL FROM THE SEBASTIAN COUNTY CIRCUIT COURT, GREENWOOD DISTRICT [NO. CIV-2007-267-G]
V.	HONORABLE J. MICHAEL FITZHUGH, JUDGE
AMERICAN NATIONAL PROPERTY & CASUALTY CO. APPELLEE	REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

This appeal arises out of the grant of summary judgment to an insurance company (appellee American National Property and Casualty Company, hereinafter "American") regarding a policy of automobile insurance covering autos owned by appellants Nicholas and Deanna Dugan. The Dugans sought to file a claim regarding a car accident occurring on May 14, 2007. American denied that any coverage was in force on that date because the policy had been cancelled for non-payment effective May 12, 2007. The Dugans filed a declaratory action, arguing that coverage was in effect at the time of the accident because they had paid the overdue amount plus additional premium by check to their local agent on May 10. The Dugans contended further that a representative of American's underwriting committee stated that the Dugans's insurance was effective as of May 14 as long as payment had been made. American filed a motion for summary judgment.

The trial judge found that the Dugans had failed to demonstrate that Stokes could or did extend coverage, and therefore, he entered summary judgment in American's favor. This appeal followed. Viewing the evidence and all inferences in the light most favorable to the Dugans, as we must, we reverse and remand because American was not entitled to judgment as a matter of law at this juncture.

Declaratory judgment is typically used to determine the obligations of the insurer under a policy of insurance. *See Martin v. Equitable Life Assurance Society*, 344 Ark. 177, 40 S.W.3d 733 (2001); Ark. Code Ann. § 16-111-106 (Repl. 2006). Summary judgment should only be granted when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law. *Castaneda v. Progressive Classic Ins. Co.*, 357 Ark. 345, 166 S.W.3d 556 (2004). In reviewing summary-judgment cases, we determine whether the trial court's grant of summary judgment was appropriate based on whether the evidence presented by the moving party left a material question of fact unanswered. *Norris v. State Farm Fire & Cas. Co.*, 341 Ark. 360, 16 S.W.3d 242 (2000). The moving party always bears the burden of sustaining a motion for summary judgment. *Flentje v. First National Bank of Wynne*, 340 Ark. 563, 11 S.W.3d 531 (2000); *Youngman v. State Farm Mut. Auto. Ins. Co.*, 334 Ark. 73, 971 S.W.2d 248 (1998). All doubts and inferences from the evidence are to be drawn in the light most favorable to the party resisting the motion. *Spencer v. Regions Bank*, 73 Ark. App. 55, 40 S.W.3d 319 (2001).

Contracts of insurance should receive a practical, reasonable, and fair interpretation consonant with the apparent object and intent of the parties in light of their general object and

purpose. *Sweeden v. Farmers Ins. Group*, 71 Ark. App. 381, 30 S.W.3d 783 (2000). Here, the policy term was May 1, 2007 to November 1, 2007. The Dugans stated in their complaint that they had paid premiums for this and the earlier policies for four years by automatic draft from their checking account. The Dugans also stated that at times their bank account was insufficient to cover the monthly draft, that American sent them cancellation notices, and that each time they would deliver payment directly to their agent Gallen Stokes at his local office, which would result in the policy remaining in effect. The Dugans claimed that Stokes was a general or soliciting agent who had actual or apparent authority to accept premium payments and to bind American. The Dugans pointed to the facts that Stokes's office had an American National Property and Casualty Company sign posted outside; that the declarations page issued by American specifically states that "If you need to make any change to your policy or have any questions, contact your Agent: Gallen Stokes;" and that the cancellation notices referred them to their agent Gallen Stokes.

The Dugans claimed that they received the last notice on May 10, that it informed them that they owed back-due premium of $128 to pay through the end of coverage on May 12, and that for any further service they should contact their agent Gallen Stokes. Deanna Dugan stated that she personally delivered a check in the amount of $228 to Stokes. The Dugans stated that it was only after they notified American of the auto accident of May 14 that American refunded the excess premium.

American responded by filing a motion for summary judgment, attaching the affidavit of its agent Stokes and asserting that Stokes was merely a soliciting agent with no authority

to bind coverage. Stokes swore that he was a multi-line agent for American, that he accepted Mrs. Dugan's check on May 10 but told her that he did not believe the policy would be reinstated.

The Dugans resisted the summary-judgment motion, attaching an affidavit from each of the Dugans. The primary affiant was Deanna Dugan, who disagreed with Stokes's version of what happened in his office. Deanna swore that on three prior occasions, their bank draft was insufficient and in each instance they contacted Stokes, paid him directly, and the policy was continued in force. Deanna swore that she informed Stokes that the May 10 cancellation notice read that the policy would not be considered for reinstatement after cancellation on May 12, but that Stokes told her to pay the $128 due plus an additional $100 to cover them through May, and that if he learned before May 12 that the policy would not be continued, he would inform her.

Deanna attached the cancelled check for $228. Deanna said that she understood that this resolved any issue about acceptance of premium by American. Deanna attached the receipt of payment and refund of $100 excess from American, printed by American on May 31, 2007. Deanna also attached a modification to the bank-draft agreement, which she said they would not have executed on May 10 if coverage were ending on May 12. Deanna said that Stokes never told her that he believed the policy would not be reinstated, that she abided his instruction to pay extra premium on May 10, and that he indicated that modifying the draft agreement date would keep coverage in force. Deanna also swore that after the May 14 accident, she was contacted by a member of the underwriting committee of American, Sean

Viets, who told her that her coverage was in force and effect as long as the payment had been made and "not to worry."

American responded in defense, by stating that it was the Dugans's burden to show that Stokes had authority to extend or bind American, that she did not, that its agent agreement showed that Stokes was only vested with soliciting agent authority, and that the transcription of a phone call with underwriting demonstrated that Sean Viets did not make assurances of coverage.

American relied on *Dodds v. Hanover Insurance Co.*, 317 Ark. 563, 880 S.W.2d 311 (1994). Therein, the supreme court set forth the general rules on insurance agency, specifically that a general agent is ordinarily authorized to accept risks, to agree upon the terms of insurance contracts, to issue and renew policies, and to change or modify the terms of existing contracts. *See id.* On the other hand, a soliciting agent is ordinarily authorized to sell insurance, to receive applications and forward them to the company or its general agent, to deliver policies when issued and to collect premiums. *Holland v. Interstate Fire Ins. Co.*, 229 Ark. 491, 316 S.W.2d 707 (1958). A soliciting agent has no authority to agree upon the terms of the policies or to change or waive those terms, nor can his knowledge be imputed to the company he represents. *Id. See also Continental Ins. Cos. v. Stanley*, 263 Ark. 638, 569 S.W.2d 653 (1978). The trial court found that reasoning persuasive and entered judgment for American finding that appellants failed to present evidence that Stokes was a general agent with authority, actual or apparent, to extend coverage. On this point we agree.

However, appellants make an additional and convincing argument that summary judgment was granted in error. The standard of review requires us to view all the relevant materials and all inferences deducible from the evidence in the light most favorable to the non-movants. Therefore, for purposes of our review, we must take as fact those assertions made by Deanna Dugan in her affidavit, along with the allegations in the complaint and the inferences to be drawn from the documents provided to the trial court. The purpose of summary judgment is not to try the issues but to determine if there are issues to be tried. *Wolner v. Bogaev*, 290 Ark. 299, 718 S.W.2d 942 (1986); *Turner v. N.W. Ark. Neurosurgery Clinic, P.A.*, 84 Ark. App. 83, 133 S.W.3d 417 (2003).

Whether appellants can prevail when the time comes to weigh this evidence is another matter. The only issue before us is whether, when we view all the evidence and inferences in favor of the Dugans, there is some issue of material fact as to whether American bound itself to reinstate insurance coverage. Deanna Dugan's affidavit provided evidence to support that allegation by her contention that Sean Viets made that verbal commitment. That evidence would permit the fact-finder to conclude that coverage was extended. We believe that the posture of this case precluded the trial court's grant of summary judgment.

Reversed and remanded.

MARSHALL and BROWN, JJ., agree.