

Cite as 2024 Ark. App. 248
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-22-579

SHELTER MUTUAL INSURANCE
COMPANY

APPELLANT

V.

KAREN CHITWOOD BERRY

APPELLEE

Opinion Delivered April 17, 2024

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[NO. 17CV-21-126]

HONORABLE MARC MCCUNE,
JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Shelter Mutual Insurance Company appeals the Crawford County Circuit Court order entering partial summary judgment in favor of Karen Chitwood Berry. On appeal, Shelter argues that the circuit court erred by finding its homeowner’s insurance policy with Berry covered her loss from a fire. *We affirm.*

On October 30, 2020, an electrical fire burned Berry’s house at 318 S. 42nd Street in Van Buren. Berry had a homeowner’s insurance policy with Shelter at the time of the fire. However, Shelter denied Berry’s claim for the fire damage.

In response, on March 29, 2021, Berry initiated this action. She asserted that Shelter wrongfully denied her claim because she did not reside in the house at the time of the fire.

She requested \$40,000 with fees, penalty, prejudgment interest, and costs. She attached her policy with Shelter.

In the policy, the named insured is Berry.¹ The policy's declaration page provides that the primary location is 318 S. 42nd Street, and the description states "1 Family Brick Veneer Dwelling." The property-protection section of the policy provides in relevant part as follows:

COVERAGE A - DWELLING
INSURING AGREEMENTS

1. We cover **accidental direct physical loss** to the following property, except for those perils and losses excluded under the heading "Exclusions Applicable To Coverages A&B."

(a) **Your dwelling**, including building structures attached to it, at the **residence premises**, but only if that **dwelling** is used principally as a private **residence**.

The policy includes a definition section,² and the relevant definitions are as follows:

14. **Dwell** means to live in a location with, or without, the intent to make that place one's **residence**.

15. **Dwelling** means the structure in which *one*³ **dwells**.

....

32. **Premises** means real estate. It includes land and any improvements permanently attached to the land. For purposes of this policy, all real estate conveyed by one deed granting title to that land will be considered the same **premises**. Lands conveyed by separate deeds will be considered separate **premises**.

¹The policy includes Berry's former name, Karen L. Chitwood.

²The definition section provides that "the words shown in bold type have meaning below unless a different meaning is stated in a particular coverage or endorsement." It further states that "[w]ords in bold type that are derived from a defined word have the same root meaning."

³We have italicized "one" for emphasis.

....

41. **Reside** means to live in a location with the intent to make that place, and no other, one's permanent home.

....

43. **Residence Premises** means the **premises** described in the **Declarations** and any one or two family **dwelling owned** by **you** if it is on those **premises** and **you reside** there at the time of any occurrence for which coverage is sought under this policy. **We** will waive that **residency** requirement for limited time periods in the following situations:

....

- (b) If **you** have **resided** in that **dwelling**, **we** will waive that requirement of losses that occur within 30 days after the day **you** last **resided** there.

....

Residence premises also means the one or two family **dwelling** referred to in the **Declarations** as the "secondary residence premises," if **you own** that **dwelling** at the time of a loss covered under this policy.

....

51. **You** means any **person** listed as a **named insured** in the **Declarations**, and if that **person** is an **individual**, his or her **spouse**.

On April 30, Shelter answered Berry's complaint, asserting that coverage did not extend to the fire damage because Berry had not lived in the house in years.

On March 1, 2022, Berry moved for partial summary judgment. She asserted that the undisputed evidence showed that even though she was not living in the house at the time of

the fire, her son was living there,⁴ and she argued that the policy unambiguously provided for coverage. She thus asked the court to declare that coverage existed for the fire damage.

On March 2, Shelter also moved for summary judgment. Shelter pointed out that the parties agreed that Berry had not resided in the house for more than one year before the fire. It argued that the policy clearly and unambiguously did not provide for coverage for the fire damage because Berry was not living in the house.

On March 31, the court granted partial summary judgment in favor of Berry. The court's order states that

[t]he parties agree that the premises were occupied by [Berry's] son.

[Shelter]'s policy of insurance states:

1. We cover **accidental direct physical loss** to the following property . . .
 - (a) **Your dwelling** . . .

The word “dwelling” is defined in this policy as “a structure in which *one* lives.” (emphasis added.) The word “your” is not separately defined, but is commonly understood to mean “owned by you.” The policy’s insuring clause can reasonably be read to mean that coverage is extended to the house at 318 S. 42 Street in Van Buren, Arkansas, as long as the insured owns it, and as long as it is being occupied (i.e., is not vacant).

[Shelter] offers an alternative reading where a reference to the policy’s definition of “residence premises” suggests that a named insured must actually live in a *second* structure appurtenant to the principal residence, for that second structure to be insured against loss. The property at 318 S. 42nd Street, Van Buren, Arkansas, consists of a single dwelling; Plaintiff’s son actually lived in that dwelling at the time of the fire.

⁴In the attached affidavit, Berry stated that she married in July 2018 and that she had been living with her husband. She further stated that her furniture and many of her clothes were in the house at the time of the fire.

Arkansas law obliges the Court to resolve any ambiguity in an insurance policy against the company that wrote it. *American Investors Life Ins. Co. v. Butler*, 76 Ark. App. 355, 65 S.W.3d 473 (2002).

The Court declares as a matter of law that [Berry] is covered for her loss on October 30, 2020, under the policy issued by Shelter Mutual Insurance Company. The Court will set the matter for trial solely on the question of damages.

On April 11, Shelter filed a motion asking the court to reconsider its grant of summary judgment to Berry, and the court denied it.

On June 23, the parties filed a stipulation to Berry's damages subject to Shelter's right to appeal the coverage issue. Specifically, they stipulated to \$35,000 in damages inclusive of prejudgment interest and any penalty for which Shelter is liable under Arkansas law. On June 27, the court entered a judgment awarding Berry the stipulated-damages amount. On July 20, Shelter filed its notice of appeal.

On appeal, Shelter argues that the circuit court erred by granting Berry's motion for partial summary judgment. A circuit court may grant summary judgment when there are no genuine issues of material fact to litigate, and the movant is entitled to summary judgment as a matter of law. *Mahoney v. Derrick*, 2022 Ark. 27; *Cherokee Nation Bus., LLC v. Gulfside Casino P'ship*, 2021 Ark. 183, 632 S.W.3d 284. But when parties file cross-motions for summary judgment, they essentially agree that there are no disputed material facts, and this court must determine only whether the appellee is entitled to judgment as a matter of law. *Mahoney*, 2022 Ark. 27; *White v. Great Am. Assurance Co.*, 2022 Ark. App. 86, 641 S.W.3d 668. This court reviews questions of law de novo. *Mahoney*, 2022 Ark. 27; *White*, 2022 Ark.

App. 86, 641 S.W.3d 668. In this case, Shelter and Berry agree that Berry's son resided in the house at the time of the fire and that Berry had not lived there in over a year.

Shelter, however, argues that the policy unambiguously provides that coverage exists only if Berry resided in the house within thirty days of the fire. It relies on the policy language that it covers losses at “[y]our **dwelling**, including building structures attached to it, at the **residence premises**,” and it asserts that the “**residence premises**” definition imposes a requirement that the named insured reside at the house or have resided at the house⁵ within thirty days. In other words, Shelter argues that “there are a few requirements for a dwelling to fall under the definition of ‘resident premises.’” Shelter also complains that the circuit court based its reasoning on a truncated version of the coverage language when it did not include the key phrase “at the residence premises” in its order, and it further asserts that Berry does not present a reasonable interpretation showing coverage.

The law regarding the interpretation and construction of an insurance policy is well settled in this state. The language in an insurance policy is to be construed in its plain, ordinary, and popular sense. *Phila. Indem. Ins. Co. v. Austin*, 2011 Ark. 283, 383 S.W.3d 815; *Norris v. State Farm Fire & Cas. Co.*, 341 Ark. 360, 16 S.W.3d 242 (2000). If the language is unambiguous, this court will give effect to the plain language of the policy without resorting to the rules of construction. *Elam v. First Unum Life Ins. Co.*, 346 Ark. 291, 57 S.W.3d 165 (2001). On the other hand, if the language is ambiguous, this court will construe the policy

⁵The policy also permits for a spouse to have resided at the house.

liberally in favor of the insured and strictly against the insurer. *Id.* Language is ambiguous if there is doubt or uncertainty as to its meaning and it is fairly susceptible to more than one reasonable interpretation. *Id.*; *Phila. Indem. Ins. Co.*, 2011 Ark. 283, 383 S.W.3d 815.

In this case, we disagree with Shelter and find no error by the circuit court. The applicability of the residency requirement to the “**residence premises**” definition is ambiguous. Without applying the residency requirement, the policy otherwise covers Berry’s claim. Accordingly, the circuit court did not err in construing the policy liberally in favor of Berry and against Shelter.

Affirmed.

THYER and MURPHY, JJ., agree.

Jones, Jackson, Moll, McGinnis & Stocks, PLC, by: *Randolph C. Jackson, Michael T. Newman*, and *J. Dalton Person*, for appellant.

Smith, Cohen & Horan, PLC, by: *Matthew T. Horan*, for appellee.