In The United States District Court
for the
Southern District Of Iowa

ESTATE OF LANE THOMAS, by Nicholas Thomas, Administrator, NICHOLAS THOMAS, and ALESHA THOMAS, Plaintiffs, v. STATE FARM INSURANCE COMPANIES, Defendant.	No: 1:15-cv-00029-CFB **ORDER ON MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on a Motion for Summary Judgment by Defendant State Farm Insurance Companies (State Farm), filed on May 6, 2015 (ECF No. 7). Plaintiffs, the Estate of Lane Thomas, Nicholas Thomas, and Alesha Thomas, filed a Resistance on June 1, 2015 (ECF No. 8). State Farm filed a Reply on June 11, 2015 (ECF No. 11).

In their Resistance, Plaintiffs argued that they needed additional discovery to factually develop their claims in opposition. The Court ordered Plaintiffs to file a motion for additional time under Fed. R.Civ. P. 56(d), if they wished for more time to conduct discovery before submitting State Farm's Motion for ruling. On June 26, 2015, Mark J. Rater, counsel for Plaintiffs, filed an Affidavit stating why Plaintiffs requested additional discovery (ECF No. 13).

On June 29, 2015, the Court heard argument on the Motion for Summary Judgment, including Plaintiffs' request for additional discovery. Mr. Rater appeared for all Plaintiffs; Adam Zenor appeared for State Farm. The Court, treating Mr. Rater's Affidavit as a motion under Rule 56(d), denied time for additional discovery, because Plaintiffs had not identified additional evidence essential to justify their opposition to the Motion for Summary Judgment; additionally, for the purpose of the Motion for Summary Judgment, State Farm assumed Plaintiffs' ability to prove all alleged facts.

The parties consented to proceed before a United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c) (ECF No. 9). This matter is fully submitted.

I. SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate only when no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Yon v. Principal Life Ins. Co.*, 605 F.3d 505, 509 (8th Cir. 2010); *see* Fed. R. Civ. P. 56(a). On a motion for summary judgment, the Court views all the facts in the light most favorable to the nonmoving party. *See Beaulieu v. Ludeman*, 690 F.3d 1017, 1024 (8th Cir. 2012); *Popp Telecom, Inc. v. Am. Sharecom, Inc.*, 361 F.3d 482, 487 (8th Cir. 2004). The party resisting summary judgment "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting former Fed. R. Civ. P. 56(e)). The nonmoving party must "go beyond the pleadings and by affidavits, depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue of material fact." *Rouse v. Benson*, 193 F.3d 936, 939 (8th Cir. 1999).

II. MATERIAL FACTS NOT IN DISPUTE

The following facts are undisputed for purposes of State Farm's Motion, and any contested allegations are viewed in the light most favorable to Plaintiffs, the non-movants.

On August 17, 2011, Lane Thomas, age five months, was in the care of Teresa's Tiny Tots, an in-home daycare business operated by Defendant's insured, Teresa Chapin. Lane's parents are Plaintiffs Nicholas and Alesha Thomas. Alesha brought Lane to Chapin that morning. In the afternoon, Lane was put down for a nap on an adult bed with loose blankets. Chapin's daughter, K.F. (who was 17 years old), occasionally helped Chapin after school with the daycare business. K.F. was told to watch Lane during his nap. K.F. later found Lane unconscious on the bed, covered in vomit, and with a purple face. K.F. called an ambulance, which took Lane to the hospital. Medical personnel unsuccessfully attempted to revive Lane.

At the time of Lane Thomas's death, Chapin and her husband held a renter's insurance policy with State Farm that contained the following relevant terms:

> SECTION II – LIABILITY COVERAGES
>
> COVERAGE L – PERSONAL LIABILITY
>
> If a claim is made or a suit is brought against an insured for damages because of bodily injury … to which this coverage applies, caused by an occurrence, we will:
>
> > 1. pay up to our limit of liability for the damages for which the insured is legally liable . . . .
>
> . . . .
>
> SECTION II – EXCLUSIONS
>
> 1. Coverage L . . . do[es] not apply to:

. . . .

b. bodily injury or property damage arising out of business pursuits of any insured . . . . This exclusion does not apply:

(1) to activities which are ordinarily incident to non-business pursuits; [or]

(2) . . . to the occasional or part-time business pursuits of an insured who is under 19 years of age . . . .

. . . .

i. any claim made or suit brought against any insured by:

(1) any person who is in the care of any insured because of child care services provided by or at the direction of:

(a) any insured;

(b) any employee of any insured; or

(c) any other person actually or apparently acting on behalf of any insured; or

(2) any person who makes a claim because of bodily injury to any person who is in the care of any insured because of child care services provided by or at the direction of:

(a) any insured;

(b) any employee of any insured; or

(c) any other person actually or apparently acting on behalf of any insured.

This exclusion does not apply to the occasional child care services provided by any insured, or to the part-time child care services provided by any insured who is under 19 years of age. . . .

Ex. B to Def. Mot. Summ. J., Def. App'x at 31–34, ECF No. 7-3.

Chapin stated that a State Farm agent told her that her renter's policy covered liability arising out of a child care business.

Chapin was charged with—and pled guilty to—child endangerment for her role in Lane Thomas's death. Plaintiffs sued Chapin in Iowa District Court, and obtained a default judgment which was returned unsatisfied. Plaintiffs then brought this subrogation claim against State Farm in the Iowa District Court for Pottawattamie County. State Farm timely removed to this Court.

Plaintiffs are all citizens of Iowa. State Farm is a citizen of Illinois. The amount in controversy is $300,000, the limit of coverage under the policy. This Court therefore has jurisdiction under 28 U.S.C. § 1332.

II. DISCUSSION AND ANALYSIS

State Farm contends that it is entitled to summary judgment because Plaintiffs cannot meet their burden to show coverage under the renter's policy, and because the business pursuits and child care services exclusions unambiguously bar coverage for the loss. Plaintiffs resist, claiming that the loss occurred during part-time child care services provided by 17-year-old K.F., thereby falling within an exception to the policy exclusions. Plaintiffs also argue that the policy covers a child care business because a State Farm agent told Chapin that it did.

Interpreting an insurance policy is a matter of law. *A.Y. McDonald Indus. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 618 (Iowa 1991). In interpreting this policy, the Court has applied the standard described as follows. The intent of the parties governs a policy's meaning, and the policy language—unless it is ambiguous—determines the parties' intent.

See id. Policy provisions are ambiguous if "the language [is] fairly susceptible to two interpretations." *Id.* at 619. Iowa law "interpret[s] ambiguous policy provisions in favor of the insured." *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 536 (Iowa 2002). "If exclusionary language is not defined in the policy, we give the words their ordinary meaning." *Farm & City Ins. Co. v. Gilmore*, 539 N.W.2d 154, 157 (Iowa 1995). "Construction of an insurance policy—the process of determining its legal effect—is [also] a question of law for the court." *A.Y. McDonald Indus.*, 475 N.W.2d at 618.

In a claim for subrogation, the plaintiff steps into the shoes of the insured. *Wilson v. Farm Bureau Mut. Ins. Co.*, 770 N.W.2d 324, 328 (Iowa 2009) ("The subrogee's rights are derivative of the rights held by the insured against the tortfeasor."). Under the policy, Plaintiffs are covered only to the extent Chapin had coverage.

A. Whether Coverage Exists Under the Written Policy

State Farm first argues that Chapin was not covered under the policy even under her own alleged perception of coverage for a child care business. But absent an argument that Plaintiffs' claims against Chapin do not fall within the policy's insuring clauses, the Court will first address State Farm's arguments regarding the applicability of the policy's exclusions.

State Farm argues that two policy exclusions preclude coverage: (1) business pursuits, and (2) child care services. Chapin's services through Teresa's Tiny Tots, whether or not a "business pursuit," provided child care for Lane. Plaintiffs argue that the exception to the policy exclusion for child care services places their claims within the scope of coverage, because the proper interpretation of "part-time child care services provided by

any insured who is under 19 years of age" includes K.F.'s occasional afterschool assistance at Teresa's Tiny Tots.

Chapin's renter's policy with State Farm plainly excludes coverage for any claim brought because of child care services provided by, or at the direction of, any insured. Chapin's care of Lane falls within the policy's unambiguous exclusionary language.

On the morning of August 17, 2011, Alesha Thomas left Lane in the care of Teresa's Tiny Tots, Chapin's child care business. Any assistance to Chapin or Teresa's Tiny Tots by K.F. was performed at the direction of Chapin. Chapin's care of Lane Thomas was part of her full-time child care operation, for which Plaintiffs sued her and obtained the underlying default judgment. The care Lane was to receive on August 17, 2011, was from Chapin, and is not subject to the policy exception for occasional child care or part-time child care by an insured under age nineteen. It is not a reasonable construction of the policy to find that occasional participation by an insured who is under the age of nineteen, in the primary policy holder's child care operation, could revoke the policy's exclusion of coverage for the child care business, and trigger coverage for full-time child care provided by an adult insured. *See Boelman v. Grinnell Mut. Reinsurance Co.*, 826 N.W.2d 494, 501 (Iowa 2013) (citation omitted) ("We will not strain the words or phrases of the policy in order to find liability that the policy did not intend and the insured did not purchase."). The policy exclusion for a child care business and the exception allowing coverage for occasional babysitting by teenagers can both be applied meaningfully to exclude coverage for claims arising out of child care services provided by any insured (Teresa), unless the totality of the services giving rise to the claim amount to occasional child care, or part-

time child care provided by an insured under nineteen years of age (K.F.). Plaintiffs now seek coverage for Chapin's business, based upon claims falling within the occasional child care services exclusion. Regardless of K.F.'s participation in providing child care to Lane, the exception to the policy's coverage for part-time child care services provided by an insured under nineteen years of age does not invoke coverage for Chapin's business. As a matter of law, there is no coverage under the plain language of the policy for Plaintiffs' claims.

B. Whether Coverage Exists Based on Oral Representations of State Farm's Agent

Plaintiffs additionally argue that a genuine dispute of material fact exists regarding coverage, because Chapin stated that a State Farm agent told her that she was covered for claims arising from her daycare. But an agent's oral representation, whether made before or after the policy is issued, does not provide coverage excluded by the policy's unambiguous terms. *See Chambers v. Home Mut. Ins. Ass'n*, 242 N.W. 30, 31–32 (Iowa 1932); *cf. Randolph v. Fireman's Fund Ins. Co.*, 124 N.W.2d 528, 531–33 (Iowa 1963) ("We have held . . . that there is no ambiguity in the coverage afforded by the insurance policy issued by the defendant; and so there is no room for a construction based upon the conduct of the parties."). Any dispute over what any State Farm agent may have told Chapin at any time is immaterial. As a matter of law, the unambiguous child care services exclusion on the face of the policy bars coverage for Plaintiffs' claims against Chapin, and there is no applicable exception providing coverage.

III. CONCLUSION

No genuine dispute of material fact exists regarding the coverage of Chapin's renter's insurance policy with State Farm. Lane Thomas died during the course of child care provided by Teresa Chapin's daycare, which the policy unambiguously excludes from coverage. Any oral representation made to Chapin regarding coverage by a State Farm agent cannot expand coverage beyond the unambiguous terms of the policy issued to Chapin. For these reasons, Defendant State Farm's Motion for Summary Judgment (ECF No. 7) is **granted**.

The Proposed Scheduling Order and Discovery Plan (ECF No. 9) is **moot**. The Clerk of Court shall enter final judgment in favor of Defendant, and against all Plaintiffs.

IT IS SO ORDERED.

Dated this 6th day of August, 2015.

Celeste F Bremer

CELESTE F. BREMER
CHIEF UNITED STATES MAGISTRATE JUDGE