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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0441

Outdoor Specialties and Landscaping, LLC,
Appellant,

vs.

Minnesota Assigned Risk Plan, as administered by
Berkley Risk Administrators Company, LLC,
Respondent.

Filed March 4, 2008
Affirmed
Lansing, Judge

Dakota County District Court
File No. C6-06-6119

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Considered and decided by Lansing, Presiding Judge; Kalitowski, Judge; and Johnson, Judge.

U N P U B L I S H E D   O P I N I O N

LANSING, Judge

After an employee was injured on the job, Outdoor Specialties and Landscaping, LLC brought an action seeking a declaration that it was covered by the Minnesota Workers' Compensation Assigned Risk Plan. The district court concluded that Outdoor

Specialties' insurance had been properly cancelled and granted summary judgment. Because Outdoor Specialties received legally sufficient notice of the cancellation and the cancellation was based on a permissible reason, we affirm.

F A C T S

Outdoor Specialties and Landscaping, LLC obtained insurance in March 2003 through the Minnesota Workers' Compensation Assigned Risk Plan (MWCARP). MWCARP provides workers' compensation coverage to employers that are unable to obtain standard coverage. *See* Minn. Stat. § 79.252 (2006) (addressing qualifications for MWCARP).

To obtain the policy, Outdoor Specialties paid an estimated premium of $508.90. The actual premium was determined through an audit at the end of the policy period. In January 2004, MWCARP sent Outdoor Specialties a renewal policy that would provide coverage for a second policy period between March 2004 and March 2005. On April 1, 2004, after the start of the second policy period, MWCARP billed Outdoor Specialties for the balance of the audited premium for the first policy period, which had been calculated at $13,300.

Eight days later, on April 9, 2004, MWCARP billed Outdoor Specialties for the $13,641 premium for the *second* policy period. On April 17, 2004, MWCARP sent a second bill for the audited premium from the *first* policy period. On April 21, 2004, Outdoor Specialties made a $4,199 payment on the premium for the *second* policy period. Because Outdoor Specialties had still not paid the audited premium from the *first* policy period, MWCARP mailed a cancellation notice on April 27, 2004.

According to the terms of the cancellation notice, the policy was cancelled on June 1, 2004. On June 22, 2004, an employee of Outdoor Specialties was injured on the job. Because Outdoor Specialties' workers' compensation insurance had been cancelled, the Minnesota Special Compensation Fund would be responsible for compensating the employee, subject to Outdoor Specialties' obligation to the fund. *See* Minn. Stat. § 176.183, subd. 1, 2 (2006) (penalizing uninsured companies and providing insurance for employees). Outdoor Specialties brought an action seeking a declaration that the cancellation was invalid and that the workers' compensation policy remained in effect. The district court granted MWCARP's motion for summary judgment and Outdoor Specialties now appeals.

D E C I S I O N

"On appeal from summary judgment, we determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 788 (Minn. 2005). In assessing the evidence, we take the view most favorable to the party against whom judgment was granted. *Motorsports Racing Plus, Inc. v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 n.1 (Minn. 2003). But if the nonmoving party fails to raise a genuine issue of fact on any element essential to establishing its case, summary judgment is appropriate. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). When the facts are not in dispute, we review the district court's application of law de novo. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

I

To cancel workers' compensation coverage, the insurer must send written notice to the policyholder. Minn. Stat. § 176.185, subd. 1 (2006). The notice can be "delivered or mailed." *Id.* The notice itself must be unconditional and use unambiguous language. *McQuarrie v. Waseca Mut. Ins. Co.*, 337 N.W.2d 685, 687 (Minn. 1983).

Outdoor Specialties argues that under section 176.185 the insurance company must prove that the policyholder received actual notice of the pending cancellation. But Outdoor Specialties' position is inconsistent with the statutory requirements.

Under Minn. Stat. § 60A.38, subd. 4 (2006), "proof of mailing of the notice of cancellation . . . is sufficient proof the proper notice has been given." Although this statute is primarily focused on commercial liability and property policies, its provisions expressly apply to workers' compensation policies as well. Minn. Stat. § 60A.352 (2006). Thus, under section 60A.38, subdivision 4, it was sufficient for MWCARP to prove that it mailed the cancellation notice and it was not required to prove that Outdoor Specialties received actual notice of cancellation.

Outdoor Specialties, however, argues that actual notice is required under *Sazama Excavating, Inc. v. Wausau Ins. Cos.*, 521 N.W.2d 379 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994). We reject this argument because neither the *Sazama* opinion nor the appellate briefs in that case addressed the effect of the language in Minn. Stat. § 60A.31 (1992) and Minn. Stat. § 60A.38, subd. 4 (1992). The unaddressed language provides that, under the workers' compensation act, proof of mailing is sufficient proof of proper notice of cancellation. *Id.* Instead *Sazama* applies the common-law rule to

determine whether the documents that Sazama actually received complied with the insurance policy's requirement that the insurer must provide notice of cancellation "by first class mail" and that the notice must be sent "not less than 30 days" in advance of cancellation for nonpayment of premium. *Id.* at 383. Because the *Sazama* decision did not address section 60A.31 or section 60A.38, subdivision 4, it does not provide a basis for disregarding this statutory language.

In addition, Outdoor Specialties argues that section 60A.38, subdivision 4, should not apply because it is in conflict with the workers' compensation statute. But both the workers' compensation statute and section 60A.38 permit the notice to be delivered or mailed. Minn. Stat. §§ 60A.38, subd. 3 (2006) (permitting notice "by first class mail . . . or by delivery to the policyholder's last known address"), 176.185 (permitting notice to be "delivered or mailed"). Section 60A.38, subdivision 4, simply provides a complementary method of *proving* that the notice was delivered or mailed. As a result, the two statutes are not in conflict.

Thus, Outdoor Specialties has not provided a valid reason to disregard the statutory text. Because section 60A.38, subdivision 4, permits proof of notice through proof of mailing, MWCARP was not required to provide proof of actual notice. Accordingly, no genuine issue of material fact exists on the delivery of notice.

In addition to arguing that MWCARP failed to properly deliver the cancellation notice, Outdoor Specialties argues that the cancellation notice itself was improper because it received a number of different notices from MWCARP at about the same time. But under *McQuarrie*, the cancellation notice—not the surrounding proceedings—must

be unambiguous. *See McQuarrie*, 337 N.W.2d at 687 (discussing cancellation notice). Outdoor Specialties has not provided a basis for concluding that the cancellation notice was ambiguous.

The cancellation notice in this case was unambiguous—it informed Outdoor Specialties that the "policy is cancelled as of 12:01 a.m. on 6/1/2004." The stated reason for the cancellation was "Non-payment of Premium" and the notice indicated that the unpaid premium was the "$13,300.00 due for balance of 03/04 Audited Premium." We recognize that a notice of reinstatement of coverage may in some circumstances make the notice of cancellation ineffective. *See Caduff v. Universal Underwriters Ins. Co.*, 381 N.W.2d 9, 12 (Minn. App. 1986) (holding that cancellation notice was ineffective because policyholder subsequently received notice indicating vehicle was covered), *review denied* (Minn. Mar. 27, 1986). In this case, however, MWCARP took no action after mailing the cancellation notice that could have caused Outdoor Specialties to believe that its policy was not being cancelled. Accordingly, we see no basis for concluding that the cancellation notice became ineffective. Thus, because Outdoor Specialties has failed to establish that proof of actual notice is required or that the cancellation notice was ambiguous or ineffective, no genuine issue of material fact exists on the adequacy of the notice.

Finally, Outdoor Specialties argues an issue that was not raised and decided in the district court—the failure to provide notice to its insurance agent. Under the insurance policy and under Minn. Stat. § 60A.38, subd. 3, the insurer must give notice of cancellation to the insurance agent. Outdoor Specialties argues that MWCARP failed to

do this because it mailed the notice to "King James & Associates" instead of to "James King & Associates." But we conclude that this argument is waived because it was not raised and decided in the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts generally only consider claims raised and decided in district court). A waiver holding is particularly appropriate in this case because Outdoor Specialties does not dispute that the notice was mailed to its agent's correct address; its argument is based on the order of the two names—a factual technicality that could have been better addressed by the district court.

II

Outdoor Specialties next contends that the cancellation was not permitted by the text of the insurance contract. We review the interpretation of insurance-contract terms de novo. *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 894 (Minn. 2006). If the language of the contract is unambiguous, the language must be given its plain meaning. *Id.* In interpreting an insurance contract, "all doubts concerning the meaning of the language [are] resolved in favor of the insured." *Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 692 (Minn. 1997).

The insurance contract in this case lists "Nonpayment of Premium" as a reason for cancelling the policy. The policy required Outdoor Specialties to "pay all premium when due." In addition, Outdoor Specialties acknowledged in its insurance application that it must "pay promptly all premiums when due with the understanding that failure to do so shall constitute authority . . . to cancel coverage."

In general, "upon each renewal an entirely new and independent contract of insurance is created." *Hauer v. Integrity Mut. Ins. Co.*, 352 N.W.2d 406, 408 (Minn. 1984). Outdoor Specialties' coverage during the *second* policy period was cancelled for failure to pay a premium due under the *first* policy period. Nonetheless, we conclude that the insurance contract unambiguously permitted cancellation based on Outdoor Specialties' failure to pay its premium for MWCARP coverage. Although the policy must be construed against the insurer, we cannot ignore the plain meaning of the policy and the clear intent of the parties to the contract. The words "all premium" unambiguously required Outdoor Specialties to pay all premiums due to MWCARP or risk cancellation of coverage. Outdoor Specialties' failure to do so permitted MWCARP to cancel coverage.

Therefore, because Outdoor Specialties received legally sufficient notice of cancellation and the cancellation was based on a permissible reason, the district court properly granted MWCARP's motion for summary judgment. Because we conclude that the insurance policy permitted cancellation, we do not address MWCARP's alternative argument that cancellation was authorized by Minn. R. 2781.0400 (2003).

Affirmed.