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**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1888**

Ronald Ambroz,
Appellant,

vs.

Minnesota Life Insurance Company,
Respondent.

**Filed June 29, 2010**
**Affirmed**
**Hudson, Judge**

Ramsey County District Court
File No. 62-CV-09-340

Jonathan Geffen, Arneson & Geffen, PLLC, Minneapolis, Minnesota (for appellant)

Molly R. Hamilton, Terrance J. Wagener, Messerli & Kramer, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Hudson, Judge.

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

**HUDSON**, Judge

Appellant challenges the district court's determinations that: (1) respondent insurer properly denied benefits from his deceased wife's life-insurance policy because appellant's wife misrepresented in the policy application that she did not suffer from heart disease; and (2) the term "heart disease" is not ambiguous. Because the district

court did not err by determining that the term "heart disease" was not ambiguous, that appellant's wife had been diagnosed with heart disease, and that she misrepresented that she had not been diagnosed with heart disease within the past two years, which would have substantially affected the decision to issue the policy, we affirm.

## FACTS

On July 3, 2007, decedent Loretta Ambroz completed an application for a credit life-insurance policy with respondent Minnesota Life Insurance Company, which related to debt she had incurred with Wells Fargo Bank, N.A.[1] The application contained the following question:

> In the past two years, have you had, been diagnosed as having or been treated for heart disease, heart attack, arteriosclerosis, stroke, cancer (except non-invasive skin cancer), leukemia, diseases of the brain, kidney or liver, AIDS, or any disorder of the immune system or had any test showing evidence of antibodies to the AIDS virus (a positive HIV test)?

The application stated that a "yes" answer to this question means that the applicant is "not eligible for life and/or disability insurance coverage." Ms. Ambroz answered "no" to the question.

Ms. Ambroz died on March 20, 2008, with a balance remaining on her loan with Wells Fargo. Her listed cause of death was myocardial infarct with cardiac arrest. Her medical records show that she visited Park Nicollet Clinic in March 2006 for issues related to alcohol abuse, depression, and anxiety. Her record from that visit notes a

[1] Credit life insurance is life insurance on a borrower that pays the amount of a debt if the borrower dies. *Black's Law Dictionary* 1010 (9th ed. 2009).

medical history significant for atrial fibrillation and an evaluation by a cardiologist in May 2005, when (1) an echocardiogram showed "mild dilatation of her ventricles," and (2) it was recommended that she consider medication "if her atrial fibrillation returns."[2] At the March 2006 visit, Ms. Ambroz complained of heart palpitations and was referred to her cardiologist for evaluation of her atrial fibrillation.

In July 2006, Ms. Ambroz visited Park Nicollet Clinic for followup after a recent hospitalization for, among other complaints, acute alcohol intoxication, atrial fibrillation, and gastritis. Her record from that visit shows that a clinician discussed with her the "continuation of atrial fibrillation, risk of stroke." Ms. Ambroz was not taking Atenolol, a heart medication that had been prescribed to her. At a separate visit, she received a diagnosis of "[c]ardiac arrhythmia secondary to ventricular ectopy."

After Ms. Ambroz's death, respondent denied benefits and cancelled coverage, based on its opinion that Ms. Ambroz had been diagnosed as having, and had been treated for, heart disease within the two-year period before she applied for the policy.

Appellant Ronald Ambroz, Ms. Ambroz's husband, filed an action in Ramsey County conciliation court on behalf of her estate to collect the policy benefits. The conciliation court denied benefits, and appellant filed a notice of removal to district court. The district court accepted a partial stipulation of facts and held a bench trial with additional testimony.

Appellant testified that he knew that his wife had atrial fibrillation, but he never heard a doctor tell her that she suffered from heart disease, and she never told him that

[2] The May 2005 date was beyond the two-year period relating to the policy application.

she had heart disease. He was not aware that she had been seen by a cardiologist or that she had been prescribed heart medication. Ms. Ambroz's daughter testified that her mother's irregular heartbeat had been present since childhood and was not a concern to Ms. Ambroz. Nor was the daughter aware that Ms. Ambroz had seen a cardiologist or had been encouraged to return to see one. Ms. Ambroz's sister testified that she was with Ms. Ambroz when she completed the policy application and that Ms. Ambroz had said that she had not been told that she had heart disease. All three family members testified that Ms. Ambroz was a very honest person.

Dr. George Battis, respondent's medical director, testified that records of Ms. Ambroz's March 2006 clinic visit indicated that: (1) she had seen a doctor specifically for a heart-related problem and was encouraged to return; and (2) an echocardiogram had shown mild dilatation of the ventricles, the main pumping chambers of the heart. He testified that dilated ventricles are a form of heart disease and that atrial fibrillation is "[m]ost often" a form of heart disease. He testified that the prescription for Atenolol was relevant because that drug is used to treat both atrial fibrillation and ventricular fibrillation, which is much more serious, and fibrillation could ultimately result in cardiac arrest. He gave his opinion that Ms. Ambroz suffered from heart disease.

The district court issued findings of fact, conclusions of law, and judgment determining that when Ms. Ambroz applied for the policy, she knew that she suffered from heart disease, which she concealed from respondent, and that, had respondent known that Ms. Ambroz suffered from heart disease, it would not have issued the policy.

The district considered appellant's posttrial argument that "heart disease" is an ambiguous term, but concluded that the use of the term in a non-technical context is not ambiguous and denied appellant's motion to vacate or amend the judgment. This appeal follows.

**D E C I S I O N**

In reviewing the decision of a district court sitting without a jury, this court will set aside the district court's findings of fact only if they are clearly erroneous. *Patterson v. Stover*, 400 N.W.2d 398, 400 (Minn. App. 1987) (citing Minn. R. Civ. P. 52.01). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). "An appellate court is not bound by, and need not give deference to, the district court's decision on a question of law." *Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)).

Under Minnesota law, if an insurance policy is issued without a previous medical examination, "statements made in the [policy] application as to the . . . physical condition . . . of the insured shall be valid and binding upon the company, unless willfully false or intentionally misleading." Minn. Stat. § 61A.11 (2008). Thus, an insurance company "has the option to void an insurance contract once it discovers that the insured has willfully made a false representation which is material and which increases the contractual risk undertaken by the insurer." *Howard v. Aid Ass'n for Lutherans*, 272 N.W.2d 910, 912 (Minn. 1978). A person is precluded from recovering under the policy

if the insured had full knowledge of facts that were concealed from the company and if those facts, had they been disclosed, would have "substantially affect[ed] or impair[ed] an insurer's ability to make a reasonable decision to assume the risk of coverage." *Id.* at 912–13. The insurer has the burden to prove that a policy applicant misrepresented his or her physical condition. *Berthiaume v. Minn. Mut. Life Ins. Co.*, 388 N.W.2d 15, 17 (Minn. App. 1986), *review denied* (Minn. July 31, 1986).

Appellant argues that the district court erred by determining that appellant had "heart disease" within the meaning of the policy application. Appellant maintains that the term "heart disease" is ambiguous and should be construed against respondent. *See Siemers v. United Benefit Life Ins. Co.*, 246 Minn. 459, 465, 75 N.W.2d 605, 609 (1956) (stating that doubts in meaning of insurance policy are to be construed in favor of insured). Whether an insurance policy or an application for insurance contains an ambiguity is a legal question, which this court reviews de novo. *Hammer v. Investors Life Ins. Co. of N. Am.*, 511 N.W.2d 6, 8 & n.3 (Minn. 1994). Insurance-policy language is considered ambiguous only if it is subject to more than one reasonable interpretation. *Id.* at 8. "If no ambiguity exists, there is no reason for construction, and the court is bound to attribute the usual and accepted meaning to the phrase." *Id*.

We agree with the district court's conclusion that the term "heart disease," as used in a non-technical context, is not ambiguous. *See Auto-Owners Ins. Co. v. Hanson*, 588 N.W.2d 777, 779 (Minn. App. 1999) (applying non-technical approach to definition under insurance exclusion), *review denied* (Minn. Apr. 20, 1999). Using a plain, non-technical meaning, a "disease" is defined as "[a] deviation from the healthy and normal

functioning of the body" or "special classes of pathological conditions with similar traits, such as having similar causes and affecting similar organs." *Black's Law Dictionary* 535 (9th ed. 2009). Ms. Ambroz's medical records show that she had visited a cardiologist, who performed an echocardiogram, diagnosed both atrial fibrillation and dilatation of the ventricles, and prescribed heart-related medication. Respondent's medical director testified that dilated ventricles can produce ventricular fibrillation, which can ultimately result in cardiac arrest. Based on this record, the district court did not clearly err by determining that Ms. Ambroz suffered from heart disease within the meaning of the policy application.

Appellant also argues that because Ms. Ambroz did not know that she had heart disease, she did not intend to deceive respondent by failing to check the "yes" box on the policy application. But proof of a subjective "premeditated design" or intent to deceive in answers to specific health questions is not required. *See Ellis v. Great-West Life Assurance Co.*, 43 F.3d 382, 386-87 (8th Cir. 1994) (summarizing Minnesota law interpreting Minn. Stat. § 61A.11). A reviewing court focuses instead on whether a policy applicant knew objective facts supporting a diagnosis and whether those facts would have substantially affected the insurer's decision to provide coverage. *See Useldinger v. Old Republic Life Ins. Co.*, 377 N.W.2d 32, 36-37 (Minn. App. 1985) ("[I]t is clear that decedent knew he had high blood pressure even if he did not subjectively appreciate the seriousness of the condition."), *review denied* (Minn. Jan. 17, 1986); *see also Berthiaume*, 388 N.W.2d at 19 (concluding that decedent's failure to disclose high

blood pressure for which he had been treated would have influenced insurer's decision to provide coverage).

Here, Ms. Ambroz's medical records, combined with the testimony of respondent's medical director, reasonably support the district court's findings that Ms. Ambroz had been informed that she had heart disease, was told to arrange treatment for that condition, and did not inform respondent of the disease. We agree with the district court that the facts supporting Ms. Ambroz's diagnosis would have substantially affected respondent's decision to issue coverage, thereby precluding appellant from recovery under the policy.

**Affirmed.**