STATE OF MICHIGAN

COURT OF APPEALS

AMERISURE MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
January 23, 2007

No. 259889
Wayne Circuit Court
LC No. 03-313833-CK

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellee,

v

AMERISURE MUTUAL INSURANCE COMPANY,

Defendant-Appellant,

and

DETROIT BOARD OF EDUCATION,

Defendant-Appellee.

No. 259890
Wayne Circuit Court
LC No. 03-337662-CK

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Amerisure Mutual Insurance Company (Amerisure) appeals as of right the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) to Citizens Insurance Company of America (Citizens). We affirm.

In July 1995, Citizens issued a policy of insurance to the Detroit Board of Education (DBE). The policy, procured for the DBE by LeRoy Bostic, an employee of the Earl Jones Commonwealth Agency, used covered auto symbol "01" to define the scope of liability coverage. The policy defined covered auto symbol "01" as "any auto." "Auto" was defined in the policy as "a land motor vehicle, trailer or semi-trailer designed for travel on public roads but does not include 'mobile equipment.'" The DBE renewed the policy for six consecutive years with coverage ending in July 2002. The Earl Jones Commonwealth Agency serviced the policies issued by Citizens until July 1998, when the servicing was taken over by the Long Insurance Agency.

The DBE also had a policy of insurance with Amerisure from 1995 to 2002. Like the Citizens policies, the Amerisure policies defined the scope of liability coverage with covered auto symbol "01." The Amerisure policies contained the same definitions for covered auto symbol "01" and "auto" as did the Citizens policies.

From 1995 to 2002, the Earl Jones Commonwealth Agency and the Long Insurance Agency submitted all claims arising out of the liability of the DBE's fleet of school buses to Amerisure, and Amerisure paid the claims. In October 2001, Amerisure discovered the Citizens policies, and shortly thereafter, believing that it and Citizens provided concurrent liability coverage for the DBE's fleet of school buses, Amerisure forwarded Citizens a list of bus-related claims for Citizens' handling. Amerisure also informed Citizens that it reserved the right to seek reimbursement for claims it had already paid.

In March 2002, Citizens requested the DBE to agree to reform the Citizens policies to reflect the scope of liability coverage intended by Citizens and the DBE. According to Citizens, both it and the DBE intended that the Citizens policies would only provide liability coverage for the DBE's fleet of service vehicles. In September 2002, without having heard from the DBE, Citizens issued endorsements which modified the covered auto symbol for liability coverage from "01" to "10." The endorsement defined covered auto symbol "10" as "any 'auto' except school buses." The endorsements did not result in an increase or decrease in the premiums paid.

Amerisure sued Citizens for breach of contract. According to Amerisure, Citizens breached its contract of insurance with the DBE when it failed to reimburse Amerisure for one-half of all claims paid by Amerisure. Citizens then filed a complaint against Amerisure and the DBE for reformation of its policies. After the trial court consolidated the two cases, Citizens moved for summary disposition pursuant to MCR 2.116(C)(10) in both cases. Holding that Citizens was entitled to reform its policies because Citizens and the DBE never intended for Citizens to provide liability coverage for the DBE's fleet of school buses, the trial court granted Citizens' motions for summary disposition.

On appeal, Amerisure claims that the trial court erred in allowing Citizens to reform its insurance policies because there was no mutual mistake. We review a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and documentary evidence presented, viewed in a light most favorable to the non-moving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

We also review de novo the applicability of equitable doctrines. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997).

A contract for automobile insurance may be reformed as a result of mutual mistake. *Liberty Mut Ins Co v Michigan Catastrophic Claims Ass'n*, 248 Mich App 35, 47; 638 NW2d 155 (2001). Where there is clear evidence that the parties reached an agreement and, as a result of mutual mistake, the written contract does not reflect the parties' true intent, a court may reform the contract to reflect the parties' actual intent. *Olsen v Porter*, 213 Mich App 25, 29; 539 NW2d 523 (1995). While we will not hesitate to reform a contract if there is a mutual mistake, the mistake must be established "beyond cavil by clear and satisfactory evidence." *Goldman v Century Ins Co*, 354 Mich 528, 532; 93 NW2d 240 (1958).

In the present case, the evidence establishes that Citizens and the DBE reached an agreement that Citizens would provide liability coverage to the DBE's fleet of service vehicles, but not to the DBE's fleet of school buses. In 1995, Bostic asked Citizens to insure the DBE's fleet of service vehicles and its fleet of school buses. John Carlisle, an underwriter at Citizens, agreed to look at the DBE's fleet of service vehicles, but, according to Bostic, Carlisle made it clear to him that Citizens was not willing to insure the DBE's fleet of school buses. Bostic then submitted a formal application for insurance to Citizens. Although, Bostic requested liability coverage for covered auto symbol "01" in the application, it is clear from Bostic's cover letter, the rest of the application, and Bostic's explanation for requesting covered auto symbol "01" that Bostic was not requesting liability coverage for the DBE's fleet of school buses. In his cover letter, Bostic stated that the insured risk was "the service fleet for the Detroit Public Schools," which consisted of "some 223 units." In 1995, the DBE's fleet of school buses consisted of more than 500 units. Further, in the application, Bostic described the insured risk as the "service fleet and driver education vehicles for the public school system for the City of Detroit." Bostic also explained in the application that he was seeking insurance coverage to replace that which had previously been issued by USF&G Insurance Company. Before July 1995, USF&G Insurance Company only insured the liability of the DBE's fleet of service vehicles. At his deposition, Bostic testified that he requested liability coverage for covered auto symbol "01" to relieve the DBE of the requirement of reporting to Citizens each time it added a vehicle to its fleet of service vehicles. Bert Foote, the commercial lines manager at Citizens, testified that Citizens never intended to provide liability to the DBE for the DBE's fleet of service vehicles and that Citizens used covered auto symbol "01" to relieve the DBE of the notice requirement.

The conduct of Citizens after it issued the initial policy to the DBE in 1995 also demonstrates that Citizens never intended to provide liability coverage to the DBE's fleet of school buses. The premium for the initial policy issued by Citizens was approximately $180,000, but over the course of the next six years, the premium rose to approximately $300,000. But, according to Mary Greenhill, the DBE's primary service account representative at the Long Insurance Agency, a premium of $300,000 was not enough to provide liability insurance to a fleet of school buses. In fact, the premium for the Amerisure policy in 1995 exceeded $600,000. In addition, in 1998, when the DBE included a school bus on its list of service vehicles, Citizens requested that the school bus be removed because it did not insure the liability of school buses. Finally, in 1996, Citizens refused a request from the Long Insurance Agency to insure the DBE's fleet of school buses. The refusal demonstrates that Citizens did not believe that it was providing liability coverage to the DBE for its fleet of school buses.

This evidence, along with the testimony of Bostic, Foote, Greenhill, and Lawrence Long, the owner of the Long Insurance Agency, that Citizens and the DBE never intended for Citizens to provide liability coverage to the DBE's fleet of school buses, demonstrates that Citizens and the DBE reached an agreement that Citizens would only insure the DBE's fleet of service vehicles.

This agreement was not reflected in the insurance policies issued by Citizens. A court's goal in interpreting a contract is to honor the intent of the parties. *Zantel Marketing Agency v Whitesell Corp*, 265 Mich App 559, 569; 696 NW2d 735 (2005). However, when the contract's language is clear, interpretation of the contract is limited to that language, and the contract must be enforced as written. *Chestonia Twp v Star Twp*, 266 Mich App 423, 432; 702 NW2d 631 (2005). The policies issued by Citizens plainly state that they provide liability coverage to any "land vehicle, trailer or semi-trailer designed for travel on public roads." Citizens does not argue that a school bus is not a "land vehicle . . . designed for travel on public roads." Accordingly, because the policies issued by Citizens provide liability coverage to the DBE's fleet of school buses, the policies do not reflect the true intent of Citizens and the DBE. Therefore, the policies may be reformed to reflect the true intent of Citizens and the DBE if the policies' failure to reflect the parties' intent was the result of a mutual mistake. *Olsen, supra* at 29.

A mutual mistake may exist if the terms used in the contract do not reflect the parties' intent:

> "There are two well-defined classes of mistakes of law in contracts: first, a mistake in law as to the legal effect of the contract actually made; and, second, a mistake of law in reducing to writing the contract, whereby it does not carry out or effectuate the intention of the parties. In the former, * * * the contract actually entered into will seldom, if ever, be relieved against unless there are other equitable legal features calling for the interposition of the court; but in the second class, where the mistake is not in the contract itself, but terms are used in or omitted from the instrument which give it a legal effect not intended by the parties, and different from the contract actually made, equity will always grant relief unless barred on some other ground, by correcting the mistake so as to produce a conformity of the instrument to the agreement." [*Schmalzriedt v Titsworth*, 305 Mich 109, 119-120; 9 NW2d 24 (1943), quoting 10 RCL, p 315.]

In the present case, Bostic requested and Citizens used covered auto symbol "01" to relieve the DBE of the requirement of notifying Citizens each time it added a vehicle to its fleet of service vehicles. Because covered auto symbol "01" was used for this purpose, rather than for the purpose of providing liability coverage to the DBE's fleet of school buses, the terms of the policies issued by Citizens did not reflect the intent of Citizens and the DBE and gave the policies a legal effect that was not intended by the parties. Accordingly, the DBE and Citizens shared the mistake that the insurance policies only afforded the DBE liability insurance for its fleet of service vehicles.

This mistake continued to be shared by the DBE and Citizens after the Long Insurance Agency took over the servicing of the policies in 1998. When the Long Insurance Agency received the Citizens policy, Long and Greenhill were concerned about Citizens' use of covered auto symbol "01" because they knew that Citizens and the DBE intended for Citizens to only

insure the DBE's fleet of service vehicles. The evidence presented establishes that Greenhill contacted Citizens once about covered auto symbol "01" and that she was told the original policy had an exclusion for buses. Based on this conversation, Greenhill felt comfortable in the continued use of covered auto symbol "01" to define the scope of liability coverage. Accordingly, the DBE continued to share in the mistake that the Citizens policies only provided liability coverage to its fleet of service vehicles even after the policies were serviced by the Long Insurance Agency. Because Citizens and the DBE both believed that the insurance policies issued by Citizens did not provide liability coverage to the DBE's fleet of school buses, the policies may be reformed unless reformation is barred on some other ground. *Schmalzriedt, supra* at 120.

Amerisure argues that reformation of the policies is barred by Citizens' inexcusable neglect in failing to read the policies and to discover its mistake of using covered auto symbol "01." However, because Citizens intentionally used covered auto symbol "01" to define the scope of liability coverage, Citizens would not have discovered its mistake by simply reading the policies. Moreover, the mere failure to read an insurance policy does not prevent reformation based on mutual mistake. *Mantua v Auto Club Ins Ass'n*, 206 Mich App 274, 280; 520 NW2d 380 (1994). Thus, Citizens' alleged failure in reading its insurance policies does not bar the reformation of the policies.

In the event that Citizens did intend to use covered auto symbol "01," Amerisure argues that reformation of the policies is barred because Amerisure must bear the risk of the mistake. A party who bears the risk of a mistake is not entitled to rescind the contract. *Lenawee Co Bd of Health v Messerly*, 417 Mich 17, 30; 331 NW2d 203 (1982). A party bears the risk of a mistake in the following three circumstances:

> (a) the risk is allocated to him by agreement of the parties, or
>
> (b) he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient, or
>
> (c) the risk is allocated to him by the court on the ground that it is reasonable in the circumstances to do so. [1 Restatement Contracts, 2d, § 152, p 385.]

However, Amerisure has failed to provide us with any basis for its belief that Citizens must bear the risk for its mistake. Because a party may not merely announce his position and leave it to this Court to discover and rationalize the basis for the claim, *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003), Amerisure has abandoned this argument.

Amerisure also argues that Citizens' failure to discover and to correct the mistake after being notified by one of its own underwriters and the Long Insurance Agency that its policies provided liability coverage to the DBE's fleet of school buses bars Citizens from reforming the contract. Amerisure, however, has not provided us with any authority to support its proposition that a party's failure to discover and correct a mutual mistake after the parties' agreement has been reduced to written contract bars the party from reforming the contract. Accordingly, Amerisure has also abandoned this argument. *Ambs, supra* at 650.

As Amerisure has not provided us with any grounds for why the reformation of the Citizens insurance policies should be barred, we affirm the trial court's order allowing Citizens to reform its policies. Amerisure, nonetheless, argues that, even if we affirm the trial court's order allowing Citizens to reform its policies, the reformed policies are ineffective with regard to the losses it has already paid. Amerisure cites to *Liberty Mut Ins Co, supra* at 48, in which we ruled that a reformed insurance policy shall apply to an innocent third-party if the reformation burdens the third-party, to support its position. See also *Troff v Boeve*, 354 Mich 593, 598; 93 NW2d 311 (1958). However, when Amerisure issued and renewed its insurance policy to the DBE for the DBE's fleet of school buses, Amerisure was unaware of the Citizens policies. Thus, Amerisure never expected that, from July 1995 to July 2002, it would not be responsible for anything but 100 percent of the claims that were covered by its insurance policies. Accordingly, because Amerisure will not be burdened if Citizens' reformed policies are effective with regard to claims it has already paid, the reformed insurance policies are effective regarding losses Amerisure has already paid.

Finally, on appeal, Amerisure claims that the endorsements issued by Citizens were ineffective with regard to its rights of subrogation. We decline to address this issue. Because we hold that the reformed policies are effective with regard to losses already paid by Amerisure, it is unnecessary to decide whether the endorsements are effective with regard to Amerisure's rights of subrogation.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot
/s/ Deborah A. Servitto