SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3238-21

MARY ANN IAECK,

Plaintiff-Appellant,

v.

PATRICIA BARNABA,

Defendant,

and

FEDERAL INSURANCE COMPANY,

Defendant-Respondent.

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Submitted September 11, 2023 – Decided October 16, 2023

Before Judges Gilson, DeAlmeida, and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-4363-19.

Rebenack, Aronow & Mascolo, LLP, attorneys for appellant (Matthew G. Bonanno, of counsel and on the briefs).

Tressler LLP, attorneys for respondent (Timothy M. Jabbour and Neli Kharbedia, of counsel and on the brief).

PER CURIAM

Plaintiff Mary Ann Iaeck lived with Patricia Barnaba in a condominium owned by Barnaba. Plaintiff fell down a flight of steps in the condominium and claimed that Barnaba was negligent in causing her fall. Barnaba had a homeowner's insurance policy with personal liability coverage issued by defendant Federal Insurance Company (Federal). The issue on this appeal is whether Barnaba's liability for plaintiff's personal injuries is covered by Federal's insurance policy.

Plaintiff appeals from two orders. The first order granted Federal's motion for summary judgment based on an exclusion of coverage for liability to persons who live with the policyholder. The second order denied plaintiff's motion for summary judgment in her favor. Because the Federal insurance policy is clear and unambiguous in excluding coverage for Barnaba's liability for plaintiff's injuries, we affirm.

I.

We accept the facts as alleged by plaintiff and view them in the light most favorable to plaintiff, as the party against whom summary judgment was

granted. Branco v. Rodrigues, 476 N.J. Super. 110, 115 (App. Div. 2023) (quoting Bauer v. Nesbitt, 198 N.J. 601, 604 n.1 (2009)). In doing so, we note that although the parties dispute certain facts, the material facts are not in dispute.

Barnaba owns a condominium in a building in Bradley Beach.[1] Plaintiff has lived with Barnaba in the condominium since 2008. Plaintiff had a verbal lease with Barnaba and paid Barnaba rent.[2] It is undisputed that plaintiff and Barnaba shared the use of parts of the condominium, including the kitchen, the garage, the mailbox, and the space where the washing machine and dryer were located. Plaintiff used the bedroom and bathroom on the fourth floor of the condominium.

On March 20, 2019, plaintiff fell down a stairway in the condominium. She claimed that she tripped because "the lights were out, the handrail was loose and [Barnaba] had [placed] boxes and other things on the steps."

[1] The parties sometimes refer to the condominium as an apartment. The material fact is that Barnaba owned the dwelling unit where she and plaintiff lived.

[2] Federal questions whether plaintiff is really a tenant. We do not deem that issue to be material because there is no dispute that plaintiff was living with Barnaba at the condominium.

As a result of her fall, plaintiff suffered "injuries to her left leg, including a displaced fracture of [her] tibia and fibula and compartment syndrome with compartment pressures of [ninety]." Those injuries have required multiple surgeries, which have left plaintiff with permanent scarring.

At the time of the accident, Barnaba had a "Masterpiece" insurance policy issued by Federal.[3] The policy covered Barnaba's "home" and provided her with "personal liability coverage." The personal liability portion of the policy provided coverage for damages Barnaba was legally obligated to pay for personal injuries. In that regard, the policy stated:

> We cover damages a covered person is legally obligated to pay for personal injury or property damage which takes place [any time] during the policy period and are caused by an occurrence, unless stated otherwise or an exclusion applies. Exclusions to this coverage are described in Exclusions.

The policy defined "occurrence" as "an accident which begins within the policy period resulting in bodily injury, shock, mental anguish, mental injury, or property damage[.]"

[3] Federal is the named insurer, but the policy also refers to Chubb because Federal is an underwriting company associated with Chubb Insurance Company.

The policy contained numerous exclusions. The exclusion relevant on this appeal was entitled, "Covered person's or dependent's personal injury." That exclusion stated in relevant part:

> We do not cover any damages for personal injury for any covered person or their dependents where the ultimate beneficiary is the offending party or defendant. We also do not cover any damages for personal injury for which you or a family member can be held legally liable, in any way, to a spouse, a family member, a person who lives with you, or a person named in the Coverage Summary. We also do not cover any damages for personal injury for which a spouse, a family member, a person who lives with you, or a person named in the Coverage Summary can be held legally liable, in any way, to you or a family member.

On September 3, 2019, counsel for plaintiff sent Federal a letter stating that plaintiff had fallen at Barnaba's condominium and requesting Federal to "open a Bodily Injury claim" under its policy. Following an investigation, on January 27, 2020, Federal sent Barnaba a letter denying any obligation to provide her with coverage related to plaintiff's injuries. Federal stated that Barnaba's personal liability coverage was excluded under the policy's "Covered person's or dependent's personal injury" exclusion.

Meanwhile, on December 11, 2019, plaintiff sued Barnaba. Plaintiff alleged that Barnaba had been negligent in causing her to fall and, therefore, was responsible for her injuries. Counsel for plaintiff sent Federal a copy of the

complaint in early February 2020. Shortly thereafter, on February 27, 2020, plaintiff amended her complaint to assert direct claims against Federal and sought a declaratory judgment that the policy issued by Federal to Barnaba provided coverage for plaintiff's injuries.

On the same day that plaintiff amended her complaint to add the claims against Federal, she requested a default against Barnaba. On February 28, 2020, the trial court entered a default against Barnaba. Thereafter, in April 2021, the trial court conducted a proof hearing concerning plaintiff's injuries. Barnaba did not appear at that hearing. On April 29, 2021, a judgment in the amount of $766,303.07 was entered in favor of plaintiff against Barnaba.[4]

On June 4, 2020, Federal filed an answer to plaintiff's amended complaint, contesting any responsibility for the judgment against Barnaba. Federal and plaintiff engaged in discovery and, in April 2022, they filed cross-motions for summary judgment. On June 10, 2022, the trial court heard arguments on those motions. Three days later, on June 13, 2022, the trial court issued two orders and written opinions. One order granted summary judgment to Federal and declared that Federal did not have any indemnity or defense obligations related

[4] The parties refer to this judgment as the May 13, 2021 judgment. We refer to it as the April 29, 2021 judgment because that is the date the judgment was signed.

to plaintiff's personal injury claims against Barnaba. Accordingly, that order dismissed all claims against Federal with prejudice. The second order denied plaintiff's motion for summary judgment.

In the accompanying written opinions, the trial court held that the exclusion in Federal's policy was clear and unambiguous and applied because plaintiff lived with Barnaba. Plaintiff now appeals from the June 13, 2022 orders granting summary judgment to Federal and denying summary judgment in her favor.

II.

The controlling issue on this appeal is whether the "Covered person's or dependent's personal injury" exclusion in the Federal policy applies to plaintiff's personal injury claims because plaintiff lived with Barnaba. "The interpretation of an insurance policy, like any contract, is a question of law, which we review de novo." Sosa v. Mass. Bay Ins. Co., 458 N.J. Super. 639, 646 (App. Div. 2019) (citing Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med. & Physical Therapy, 210 N.J. 597, 605 (2012)). "In attempting to discern the meaning of a provision in an insurance contract, the plain language is ordinarily the most direct route." Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008) (citing Zacarias v. Allstate Ins. Co., 168 N.J.

590, 595 (2001)). "We are guided by general principles: 'coverage provisions are to be read broadly, exclusions are to be read narrowly, potential ambiguities must be resolved in favor of the insured, and the policy is to be read in a manner that fulfills the insured's reasonable expectations.'" Sosa, 458 N.J. Super. at 646 (quoting Selective Ins. Co., 210 N.J. at 605).

"When the provision at issue is subject to more than one reasonable interpretation, it is ambiguous, and the 'court may look to extrinsic evidence as an aid to interpretation.'" Templo Fuente de Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 200 (2016) (quoting Chubb Custom Ins. Co., 195 N.J. at 238). By contrast, "[i]f the plain language of the policy is unambiguous, we will 'not engage in a strained construction to support the imposition of liability or write a better policy for the insured than the one purchased.'" Ibid. (quoting Chubb Custom Ins. Co., 195 N.J. at 238). "[C]ourts will enforce exclusionary clauses if [they are] 'specific, plain, clear, prominent, and not contrary to public policy,' notwithstanding that exclusions generally 'must be narrowly construed,' and the insurer bears the burden to demonstrate they apply." Abboud v. Nat'l Union Fire Ins. Co. of Pittsburgh, 450 N.J. Super. 400, 407 (App. Div. 2017) (quoting Flomerfelt v. Cardiello, 202 N.J. 432, 441-42 (2010)).

Applying these principles of interpretation to the Federal policy, we hold that the "Covered person's or dependent's personal injury" exclusion applies. Accordingly, Barnaba's liability to plaintiff for her personal injuries is excluded under the Federal policy because plaintiff lived with Barnaba at the time of the accident. The Federal policy is clear in explaining that Barnaba, as the covered person, would not have coverage for "any damages for personal injury for which [Barnaba] . . . can be held legally liable, in any way, to . . . a person who lives with [her]." That language is plain and unambiguous. It applies to the personal injury suffered by plaintiff because plaintiff was living with Barnaba at the time of the accident.

Even if we read the exclusion narrowly, its plain language applies to plaintiff's personal injury claims. There is no ambiguity. In defining its coverage, the policy clearly states that the coverage applies unless an exclusion applies. The exclusions are clearly written and although there are numerous exclusions, the "Covered person's or dependent's personal injury" exclusion is clearly set forth in the policy. The exclusion, therefore, is specific, plain, and clear. It is also not contrary to public policy because it is reasonable for an insurer to exclude coverage for liability for personal injuries to people who live with the covered person.

"Although not a canon of construction, courts frequently look to how other courts have interpreted the same or similar language in standardized contracts to determine what the parties intended, especially where rules in aid of interpretation fail to offer a clear result." Chubb Custom Ins. Co., 195 N.J. at 238. Courts can "also look to whether there is a consensus among [other] jurisdictions over the interpretation to be given to the language in [an insurance policy]." Id. at 242.

No New Jersey case has analyzed the meaning of the phrase "lives with" in the context of an insurance exclusion. Cases from other jurisdictions have consistently interpreted the phrase "lives with" as unambiguous and plain in its meaning. See State Farm Mut. Auto. Ins. Co. v. Quinn, 62 F. App'x 425, 427-29 (3d Cir. 2003) (determining that "lives with" in an insurance policy was unambiguous and remanding with instructions to enter an order granting a declaratory judgment that defendant's son was excluded from coverage); Stoner v. State Farm Mut. Auto. Ins. Co., 780 F.2d 1414, 1417 (8th Cir. 1986) (finding no ambiguity in the phrase "lives with you" and affirming the grant of State Farm's motion for summary judgment on plaintiff's claims for coverage); Coley v. State Farm Mut. Auto. Ins. Co., 534 N.E.2d 220, 221-22 (Ill. App. Ct. 1989)

(deciding that the term "live with" is not ambiguous, and thus affirming the trial court's holding that there was no coverage).

In short, the Federal policy is clear and unambiguous in excluding from coverage Barnaba's liability for plaintiff's personal injuries. The trial court, therefore, correctly granted summary judgment to Federal and denied summary judgment to plaintiff.

III.

On appeal, plaintiff makes five main arguments with various related sub-arguments. First, she contends that she is entitled to coverage under Federal's policy. We have already rejected that argument by holding that Federal's policy was clear and unambiguous in excluding coverage.

Second, plaintiff argues that Federal did not "satisfy [its] burden of proof to show that [her] accident falls within the 'Covered person's or dependent's personal injury' exclusion." In making that argument, plaintiff relies on the principle that exclusionary clauses in insurance contracts are to be narrowly construed. We have already acknowledged that general principle, but we also hold that even read narrowly, the plain language of the exclusion applies.

Third, plaintiff asserts that the "Covered person's or dependent's personal injury" exclusion should be read to apply to individuals who are part of the

covered person's household or have a romantic or familial relationship with the covered person. We reject this argument as inconsistent with the plain language of the exclusion. The exclusion does not use the term "household" members. Instead, it expressly explains that there is no liability coverage for personal injuries to "a person who lives with" the covered person. Plaintiff's argument is also inconsistent with the language of the Federal exclusion. The Federal exclusion excludes liability for personal injuries "to a spouse, a family member, a person who lives with you, or a person named in the Coverage Summary." If the exclusion only applied to household members or family members, there would be no need to separately list "a spouse, a family member, [or] a person who lives with you[.]" In other words, by separately listing "a person who lives with you," Federal was clearly stating that the exclusion applied to people who were not in a familial relationship. There is also nothing in the terms "a person who lives with you" that requires that there be a romantic relationship between that person and the covered person.

In connection with this third argument, plaintiff points to Federal's investigation of the claim before it denied coverage. Plaintiff has not identified any facts concerning the investigation that create an ambiguity in the scope of the exclusion.

In her fourth argument, plaintiff puts forward an alternative contention that the exclusion is ambiguous because it could be interpreted in two ways. Plaintiff contends that because she was a tenant, there is some ambiguity. We reject that contention because even if plaintiff is a tenant, she was still "a person who live[d] with" Barnaba and, therefore, there is no ambiguity. We also reject plaintiff's contentions that the exclusion was "inconspicuous and obscured by fine print." As we have already explained, the Federal policy had a clear section listing its various exclusions. The exclusion section was referenced throughout the policy and the "Covered person's or dependent's personal injury" exclusion was clearly set forth as one of the exclusions.

Finally, we reject plaintiff's fifth argument that Federal must pay the April 29, 2021 judgment entered against Barnaba, together with interest and attorney's fees. This argument is just a repeat of plaintiff's first argument in which she effectively sought summary judgment in her favor. Because we have already detailed the reasons for rejecting plaintiff's position, this argument also fails.

Affirmed.