

NO. COA14-741

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

NORTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY,
Plaintiff

v.

Wake County
No. 13 CVS 6901

ANDREW BURNS, GRAYSON BURNS, and
JACKSON BURNS, a minor by and
through his Guardian ad Litem,
JOEL GATES HARRIS,
Defendants

Appeal by plaintiff from order entered 1 May 2014 by Judge
Robert H. Hobgood in Wake County Superior Court. Heard in the
Court of Appeals 17 November 2014.

*Young Moore and Henderson, P.A., by Robert C. deRosset and
Brian O. Beverly, for Plaintiff-Appellant.*

Coy E. Brewer, Jr. for Defendant-Appellee Jackson Burns.

BELL, Judge.

Plaintiff filed a declaratory judgment action against
Defendants, requesting that the court declare the rights and
obligations of the parties pursuant to a Commercial General
Liability Insurance Policy, including that Defendant Greyson

Burns¹ was not an insured under the policy for any personal injury claim made against him by Defendant Jackson Burns in relation to an accident that occurred on 13 February 2009. The trial court granted Defendant Jackson Burns' motion for summary judgment and denied Plaintiff's motion for summary judgment, concluding that Jackson Burns was not a "volunteer worker" as a matter of law. Plaintiff gave timely appeal to this Court. After a careful review of the record and the applicable law, we affirm the decision of the trial court.

I. Factual Background

A. Substantive Facts

Defendant Andrew Burns is married to Brenda Burns and the two have three sons: Greyson, the oldest, Dillon, the middle child, and Jackson, the youngest. Andrew and Brenda Burns own J-Ham Farms, a business started by Andrew Burns' parents. J-Ham Farms engages primarily in the purchasing and re-selling of grain. Andrew Burns is the named insured of Plaintiff's Commercial General Liability Insurance policy number GL0446104.

In 2009, twenty-year-old Greyson was employed by J-Ham Farms. His job duties included, among other duties, cleaning

¹ Defendant's name is spelled "Grayson" in this case caption pursuant to Court policy requiring case captions to reflect the caption of the judgment or order appealed from. We do, however, note the correct spelling of Greyson's name.

grain bins. Although both sixteen-year-old Dillon and eleven-year-old Jackson helped out around the business, neither was paid for any labor provided in 2009.

On 13 February 2009, Greyson went inside one of the business's grain bins to clean it out. The grain bin was designed with three holes in the floor. Grain would be pulled through the open holes by an auger² below the bin. Between 5:00 p.m. and 6:00 p.m., Mr. Burns told Jackson "to go around and help his brothers finish up the grain bin because [they were] going to have to leave shortly to go to [a] meeting" that was scheduled to begin at 6:00 p.m. Greyson did not have to give any instructions to his brothers on cleaning the bin other than telling them on which side of the bin to begin cleaning because all of the brothers had been trained by their father and had helped sweep the bins in the past. It was typical for Jackson to be asked to help clean the grain bins.

As Jackson was sweeping, he accidentally stepped into one of the holes in the floor of the bin. Jackson's left foot and leg became caught in the auger and it began pulling him down. Dillon grabbed Jackson, while Greyson leaped out of the bin to turn off the auger. Jackson's leg was torn off from below the

² An auger is a device that moves material by means of a rotating helical part.

knee. Mr. and Mrs. Burns heard a commotion from inside the house and ran outside. Mrs. Burns called 911 while Mr. Burns tied his belt around Jackson's leg as a tourniquet. Mr. Burns and Greyson returned to the grain bin and began to tear apart the auger in an attempt to retrieve the amputated portion of Jackson's leg. Jackson was transported by ambulance to a local high school football field, then airlifted to UNC Chapel Hill Hospital. Efforts to retrieve the severed leg were unsuccessful and Mr. Burns eventually received a phone call from the hospital telling him to not continue efforts to recover Jackson's leg because it had been "too long" and, even if found, the leg could not be reattached. As a result of his injuries, Jackson has undergone extensive medical treatment, including multiple surgeries, and has been provided multiple prosthetic legs.

B. Procedural Facts

Plaintiff filed a complaint on 14 May 2013 in Wake County Superior Court seeking a declaration of the parties' rights and obligations under the insurance policy, including that Greyson was not an insured under the policy with respect to any cause of action brought against him by Jackson arising out of the 13 February 2009 accident. Through his Guardian *ad Litem*, Jackson filed an answer and counterclaim on 13 June 2013, also seeking a

declaration of the parties' rights and obligations under the policy, including that Greyson qualified as an insured under the policy for any claim made by Jackson stemming from his 2009 injuries.

Jackson, through his Guardian *ad Litem*, filed a separate action on 7 November 2013 in Robeson County Superior Court against Greyson, seeking damages under the theory that his injuries were the direct and proximate result of Greyson's negligence. In response, Plaintiff amended its initial complaint on 12 December 2013 to reflect that it was providing Greyson with a defense under a reservation of rights and further seeking a declaration that it owed no duty to defend Greyson in the action brought by Jackson. Plaintiff moved for summary judgment on 4 April 2014. Defendant filed a cross-motion for summary judgment on 11 April 2014.

The motions for summary judgment were heard by the trial court on 15 April 2014. The court entered an order 1 May 2014 concluding as a matter of law that Jackson was not a volunteer worker under the policy, denying Plaintiff's motion for summary judgment, and granting summary judgment in favor of Jackson Burns.

II. Legal Analysis

A. Standard of Review

Summary judgment may be granted in favor of a party "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c). This Court reviews an order granting summary judgment utilizing a *de novo* standard of review. *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470, 597 S.E.2d 674, 693 (2004). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the [trial court]." *In re Appeal of Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003).

B. Substantive Legal Analysis

The insurance policy in place at the time of the accident was for a coverage period of 20 January 2007 to 30 January 2010. In it, Plaintiff contracted to "pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury'" except those "to which [the] insurance does not apply." The policy defines the term "insured" to include both employees and volunteer workers. However, under Section II(2)(a)(1) of

the policy, neither are considered to be an "insured" for bodily injury to "'volunteer workers' while performing duties related to the conduct of [the] business." The policy defines "volunteer worker" as

a person who is not your "employee", [sic] and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

"In interpreting insurance policies, our appellate courts have established several rules of construction. Of these, the most fundamental rule is that the language of the policy controls." *Nationwide Mut. Ins. Co. v. Mabe*, 115 N.C. App. 193, 198, 444 S.E.2d 664, 667 (1994) (citation omitted), *aff'd*, 342 N.C. 482, 467 S.E.2d 34 (1996). Our Supreme Court has stated:

As with all contracts, the goal of construction is to arrive at the intent of the parties when the policy was issued. Where a policy defines a term, that definition is to be used. If no definition is given, nontechnical words are to be given their meaning in ordinary speech, unless the context clearly indicates another meaning was intended. The various terms of the policy are to be harmoniously construed, and if possible, every word and every provision is to be given effect. If, however, the meaning of words or the effect of provisions is uncertain or capable of several reasonable interpretations, the doubts will be resolved against the insurance company and in favor of the policyholder. Whereas,

if the meaning of the policy is clear and only one reasonable interpretation exists, the courts must enforce the contract as written; they may not, under the guise of construing an ambiguous term, rewrite the contract or impose liabilities on the parties not bargained for and found therein.

Woods v. Nationwide Mut. Ins. Co., 295 N.C. 500, 505-06, 246 S.E.2d 773, 777 (1978). Utilizing this framework, we first look to the definition provided by the policy itself. See *id.* (stating that "[w]here a policy defines a term, that definition is to be used"). The policy defines the term "volunteer worker" as an individual that (1) is not an "employee"; (2) "donates his or her work"; (3) "acts at the direction of and within the scope of duties determined by" the named insured; and (4) "is not paid a fee, salary or other compensation" for his work performed for the business. It is undisputed that Jackson was not paid for his work, acted at the direction of Mr. Burns and was not an employee. The issue for this Court is whether or not Jackson *donated* his work to the business and whether, under the terms of the policy, "donate" means simply "to give without pay or compensation," as Plaintiff argues.

The policy does not define the term "donate." This Court has noted that "nontechnical words are to be given their meaning in ordinary speech, unless the context clearly indicates another meaning was intended." *Id.* at 506, 246 S.E.2d at 777. We

recognize that the term "donate" can be defined as to perform work "without receiving consideration." Black's Law Dictionary 526 (8th ed. 2004). However, we also note that the policy uses conjunctive language, stating, "donates his work . . . and is not paid a fee, salary or other compensation" (emphasis added). Therefore, if the "various terms of the policy are to be harmoniously construed, and if possible, every word and every provision . . . given effect," *Woods*, 295 N.C. at 506, 246 S.E.2d at 777, we conclude that the term "donate" must encompass more than working without receiving payment. Otherwise, the policy language that the work must be without "fee, salary or other compensation" would be superfluous and the term "donate" would have no effect.

Having determined that the term "donate" as used in the policy must mean more than "without compensation," and in order to give effect to every provision of the policy definitions, we consider the context in which the term is used: defining "volunteer worker." We note that the common everyday meaning of the word "volunteer" is characterized by not only lack of compensation, but also choice and free will.³ Therefore, considering its

³ "Volunteer" is defined as "[a] person who performs or gives his

common definitions, its use in the context of working as a volunteer, and the policy language as a whole, we conclude that to "donate" one's work under the terms of the policy at issue necessitates the presence of choice and free will.

The evidence in this case tended to establish that Jackson acted not of his own free will but in response to parental instruction. Jackson's deposition reflects the following exchange:

[Mr. Brewer]: All right. Jackson, on the day that the accident happened, when your father told you to go work in the grain bin, did you believe you had any choice but to obey him and go work in the grain bin?

[Jackson]: No.

When asked if he had ever been asked to help out with the family business and refused, Jackson stated that he had not, and that if his father and brothers asked him to help, he would do it. When asked why he had not worked in the grain bin since the accident, Jackson stated, "they haven't told me to, so I haven't."

It is clear from reviewing the entire record that Jackson's "work" on 13 February 2009 was performed at the direction of his

services of his own free will. A person who . . . performs a service . . . voluntarily." "Voluntary" is defined as "[a]rising from one's own free will. Acting on one's initiative." The American Heritage Dictionary 1355 (Second College Edition 1982).

father. Because eleven-year-old Jackson was compelled by parental authority to sweep the grain bin, and did so not out of his own free will but out of obligation and obedience, we do not consider him to have "donated" his work. Therefore, the trial court correctly concluded that, as a matter of law, Jackson was not a volunteer worker and that he was entitled to summary judgment.

III. Conclusion

For the reasons set forth above, we conclude that the trial court did not err in granting summary judgment in favor of Defendant Jackson Burns and denying Plaintiff's motion for summary judgment. Therefore, the trial court's order is affirmed.

AFFIRMED.

Chief Judge McGEE and Judge Robert C. HUNTER concur.