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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-580

Filed 6 February 2024

Mecklenburg County, No. 21 CVS 10633

ASHUTOSH VIRMANI, Plaintiff,

v.

PROFESSIONAL SECURITY INSURANCE COMPANY, Defendant.

Appeal by defendant from judgment entered 29 December 2022 by Judge Lisa C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 January 2024.

Raynor Law Firm, PLLC, by Kenneth R. Raynor, for plaintiff-appellee.

Huff, Powell & Bailey, PLLC, by Joshua Hiller, for defendant-appellant.

DILLON, Chief Judge.

Defendant Professional Security Insurance Company appeals from judgment entered in favor of Plaintiff Dr. Ashutosh Virmani. For the following reasons, we reverse the trial court's judgment and conclude Defendant was not required to reimburse Dr. Virmani for his regulatory defense fees.

I. Background

Dr. Virmani is an OB/GYN who had a medical professional liability insurance policy issued by Defendant. The policy provided coverage of up to \$50,000 per “regulatory defense” event. Regulatory defense events under the policy include proceedings regarding the policyholder’s medical license, clinical privileges, and other professional administrative actions.

In 2019, another OB/GYN at Dr. Virmani’s clinic filed a complaint about Dr. Virmani with the North Carolina Medical Board (the “Board”), expressing concerns on behalf of herself and current and former clinic staff concerning certain actions of Dr. Virmani they had observed in the workplace concerning his care of patients and inappropriate interactions he had with various individuals.

On 26 July 2019, the Board informed Dr. Virmani that he was under investigation. Dr. Virmani hired counsel to represent him, but he did not inform Defendant of the investigation until approximately sixteen months later, in November 2020, when he asked Defendant to cover his legal costs related to the investigation. Defendant denied Dr. Virmani’s request for coverage because he did not provide notice of the investigation during the appropriate policy period (which ended in November 2019). Dr. Virmani commenced this action against Defendant for reimbursement of his regulatory defense fees.

At a bench trial in December 2022, the trial court ruled in favor of Dr. Virmani, determining that the policy required Defendant to reimburse him \$50,000 for his regulatory defense fees. Defendant appeals.

II. Analysis

On appeal, Defendant contends that Dr. Virmani is not entitled to coverage under the language of the policy because he failed to timely notify Defendant of the investigation. We review the meaning of the policy language *de novo*. *See Accardi v. Hartford Underwriters Ins. Co.*, 373 N.C. 292, 295, 838 S.E.2d 454, 456 (2020) (“In North Carolina, determining the meaning of language in an insurance policy presents a question of law for the Court.”). *See also Sound Rivers, Inc. v. N.C. Dep’t of Env’t Quality*, 385 N.C. 1, 3, 891 S.E.2d 83, 85 (2023) (holding that questions of law are reviewed *de novo* on appeal).

We interpret an insurance policy according to general contract interpretation rules. *Accardi*, 373 N.C. at 295, 838 S.E.2d at 456. Our objective “is to arrive at the insurance coverage intended by the parties when the policy was issued.” *Id.* Any ambiguity in the policy is to be construed in favor of the policyholder. *Id.* However,

[a]mbiguity is not established by the mere fact that the insured asserts an understanding of the policy that differs from that of the insurance company. Rather, ambiguity exists if, in the opinion of the court, the language is fairly and reasonably susceptible to either of the constructions for which the parties contend. The court may not remake the policy or impose liability upon the company which it did not assume and for which the policyholder did not pay.

Id. at 295, 838 S.E.2d at 457 (cleaned up).

After careful review, we agree with Defendant that the trial court improperly concluded that Dr. Virmani provided proper notice of the Board investigation to

Defendant.

The language in the policy regarding proper notice to the Defendant is not ambiguous. The policy protects the policyholder “from claims first made and incidents first reported . . . during the policy period and arising out of your professional activities during the protected period, provided that you comply with the conditions and notification provisions specified in this policy” We have interpreted similar language to require a claim “to have both arisen during a covered policy term *and* to be reported within a covered policy term[.]” *See Eagle Eng’g, Inc. v. Cont’l Cas. Co.*, 191 N.C. App. 593, 598, 664 S.E.2d 62, 66 (2008) (interpreting a “claims-made” insurance policy). This notice requirement is stated multiple times throughout the policy itself and is included on the Certificates of Insurance. Indeed, the very first line of the policy following the title states that “[t]his is a claims-made and reported policy.”

Here, Dr. Virmani had the contractual duty to report the investigation to Defendant “promptly” and “during the protected period”. The evidence is uncontradicted that he failed to do so. Rather, he delayed reporting the Board’s investigation to Defendant for over a year. In that time, Dr. Virmani hired his own personal counsel to defend himself, thus denying Defendant the right to select defense counsel, as guaranteed under the policy.

Allowing Dr. Virmani’s late-reported claim to be covered under the policy would improperly transform the policy into an “occurrence policy,” an insurance

policy which indemnifies the policyholder for any loss from an event that occurs within the policy period, regardless of when the claim is made. *See, e.g., Ames v. Cont'l Cas. Co.*, 79 N.C. App. 530, 340 S.E.2d 479 (1986) (discussing that an occurrence policy may provide coverage when the loss occurred during the policy period but the insurer was not notified until after the policy period).

Dr. Virmani contends the notice requirement did not apply to regulatory defense events, like the Board investigation in this case. We disagree, as the policy's notice requirement is applicable to the whole of the policy.

REVERSED.

Judges MURPHY and CARPENTER concur.

Report per Rule 30(e).