IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

JOHN ECHTERLING,

Appellant,

v.

CASE NO.: CVA1 06-81
Lower Court Case No.: 2005-CC-3428-O

MERCURY INSURANCE COMPANY
OF FLORIDA,

Appellee.
_____/

Appeal from the County Court
for Orange County,
Deb S. Blechman, County Court Judge.

Hans Kennon, Esq., for Appellant.

Warren B. Kwavnick, Esq., for Appellee.

Before THORPE, O'KANE, and KOMANSKI, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT'S FINAL JUDGMENT

Appellant John Echterling appeals the lower court's final summary judgment in favor of Appellee Mercury Insurance Company. Appellant timely appealed the final order. See Fla. R. App. P. 9.110(b). This Court has jurisdiction. See Fla. R. App. P. 9.030(c)(1)(A).

On May 14, 2004, Appellant was involved in a single-car motor vehicle accident in Nebraska. At the time of the accident, Appellant owned a 1997 Mazda B2300 pick-up truck, which was insured with Appellee. While Appellant is a Florida resident, he was working as a salesman for Southwestern Educational Products ("Southwestern") in Nebraska when the accident occurred. Appellant's only purpose for being in Nebraska was to work for the summer

as a salesman for Southwestern.

The vehicle that Appellant was driving at the time of the accident was a GMC Sonoma pick-up truck that had been rented from Enterprise. Appellant was using the rented vehicle for work purposes at the time of the accident. Appellant was driving the rented vehicle because his Mazda pick-up truck was being repaired. Appellant did not purchase any insurance on the rented vehicle.

Appellant filed a claim with Appellee, which Appellee denied on September 23, 2004. Appellee denied the claim because the vehicle that Appellant was driving was being used for business or occupational purposes at the time of the accident.

On March 10, 2005, Appellant filed a complaint against Appellee seeking damages for breach of contract. Both parties filed motions for summary judgment. On June 12, 2006, the trial court granted Appellee's motion for summary judgment finding that there was no dispute that the Appellant was using the rented vehicle for his occupation or business. Thus, the trial court found that while rental cars would normally be covered under the policy, they are not covered if used in the insured's occupation or business. The trial court found this exclusion to be clear and unambiguous. In addition, the trial court found that the loss would be excluded under a general exclusion in the policy because the policy was not rated for business use. Accordingly, the trial court entered a final judgment on November 16, 2006. This appeal followed.

The standard of review of a summary judgment is *de novo*. Krol v. City of Orlando, 778 So. 2d 490 (Fla. 5th DCA 2001) (citations omitted). Accordingly, this Court must determine if there is any genuine issue of material fact and whether the moving party was entitled to judgment as a matter of law. Id. citing Fla. R. Civ. P. 1.510(c). It is the moving party's burden to show

that no genuine issue of material fact exists. Id. (citation omitted). Therefore, this Court must consider the evidence in the light most favorable to the nonmoving party, and if the slightest doubt exists, summary judgment must be reversed. Id.

Appellant asserts that the rented vehicle he was driving is a "non-owned" car under the policy and that as such, it should be covered. Appellant argues that the trial court erred because it failed to apply the exceptions to the policy exclusions. Appellee asserts that the insurance policy only provided coverage for the insured's car or a "non-owned" car and that the vehicle Appellant was driving at the time of the accident did not qualify under the insurance policy as Appellant's car or a "non-owned" car. In addition, Appellee contends that even if the vehicle in question was an insured vehicle under the policy, there would still be no coverage pursuant to a general exclusion in the policy which excluded claims arising while a vehicle is being used in the course of the insured's business or occupation.

An insurance policy is a contract and as such, contract principles apply to its interpretation. Am. Strategic Ins. Co. v. Lucas-Solomon, 927 So. 2d 184 (Fla. 2d DCA 2006) (citation omitted). A contract must be construed in accordance with the plain language of the policy. Continental Ins. Co. v. Collinsworth, 898 So. 2d 1085 (Fla. 5th DCA 2005). It should be construed to give effect to the intent of the parties. Am. Strategic Ins. Co., 927 So. 2d at 186. "A court may resort to construction of a contract only when the language of the policy in its ordinary meaning is indefinite, ambiguous or equivocal." State Farm Fire & Cas. Co. v. Deni Assocs. of Fla., Inc., 678 So. 2d 397, 401 (Fla. 4th DCA 1996) quoting U.S. Fire Ins. Co. v. Morejon, 338 So. 2d 223, 225 (Fla. 3d DCA 1976).

Generally, courts liberally construe coverage provisions in insurance contracts. FCCI Ins.

Co. v. Horne, 890 So. 2d 1141 (Fla. 5th DCA 2004). However, courts adhere to a strict interpretation regarding exclusion clauses. Id. (citation omitted). Exclusion clauses are read in conjunction with the rest of the insurance policy and from the perspective and understanding of a reasonable person. Am. Strategic Ins. Co., 927 So. 2d at 186 (citation omitted). "When an exclusion is ambiguous or susceptible of more than one meaning, it must be construed in favor of the insured." Id. (citation omitted). "[T]here must be a 'genuine inconsistency, uncertainty, or ambiguity in the meaning that remains after the application of the 'ordinary rules of construction' before this rule is applied." Id. quoting Excelsior Ins. Co. v. Ponoma Park Bar & Package Store, 369 So. 2d 938, 942 (Fla. 1979). "If the insurer makes clear that it has excluded a particular coverage, however, the court is obliged to enforce the contract as written." Deni Assocs. of Fla. Inc., 678 So. 2d at 401.

The policy defines an insured car as "your car, a non-owned car or a trailer." The policy provides for collision coverage only for "your car" or a "non-owned" car. "Your car" is defined as a car listed on the declarations page of the policy or a newly acquired car. The policy defines a non-owned car as follows:

> Non-owned car-means a car not:
> 1. owned by;
> 2. registered in the name of;
> 3. furnished or available for the regular or frequent use (more than 3 times per month) by:
> a. you
> b. a relative
> c. a resident; or
> d. a non resident spouse
> 4. *rented and used in an insured's employment or business*; or
> 5. operated by, rented to, leased by or in the possession of an insured during any part of each of the last 21 or more consecutive days unless the car was rented under a written and signed rental agreement from a company

> authorized and licensed to rent cars and rented/leased for the sole and complete benefit of an insured for a period of less than 30 days.

(emphasis added). The trial court found that the above definition was clear and unambiguous. A car that is rented and used in an insured's employment or business is not a non-owned car and therefore, it would not be covered under the policy. Here, it is undisputed that Appellant's sole purpose for being in Nebraska was his employment as a salesperson for Southwestern and that he was using the vehicle for employment or business purposes. Accordingly, the rented vehicle that the Appellant was driving was not a "non-owned" car under the policy. Therefore, the rented vehicle is not covered under the insurance policy with Appellee.

In addition, the policy contains the following general exclusion:

> It is agreed that unless the policy is rated for business use the insurance afforded by this policy shall not apply with respect to any claims arising from accidents which occur while any motor vehicle insured by this policy is being used in the course of the insured's occupation, business, or employment.

This policy was not rated for business use. Thus, even if the vehicle Appellant was driving was covered as a "non-owned" car, there would still be no coverage because it was being used in the course of the Appellant's occupation, business, or employment.

Appellant asserts that the vehicle he was driving is a "non-owned" car under the policy. Appellant argues that coverage exists under the following provision, which is an exception to an exclusion. The provision provides that there is no coverage for:

> loss to a non-owned car:
>
> a. while being repaired, serviced or used by any person while working in the car business;
> b. while being used in any other business or occupation. *This does not apply to a private passenger car driven by you or a relative.*

(emphasis added). It is the italicized language that the Appellant relies on for his argument that

even if he was using the rented vehicle for a business or occupation, there is comprehensive and collision coverage because the vehicle was being driven by him.

However, as stated above, the rented vehicle was not a "non-owned" car under the policy. Thus, this exclusion and its exception are not applicable. Exclusions and exceptions to exclusions cannot create coverage where no coverage exists in the first place. Siegel v. Progressive Consumers Ins. Co., 819 So. 2d 732 (Fla. 2002).

Based on the foregoing, the trial court properly granted summary judgment in favor of Appellee as the vehicle in question is not a "non-owned" car under the policy and as such, no coverage exists for the loss.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the trial court's final judgment is **AFFIRMED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this ___18____ day of ___July_____, 2008.

/S/
JANET C. THORPE
Circuit Judge

/S/
JULIE H. O'KANE
Circuit Judge

/S/
WALTER KOMANSKI
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail to: **Hans Kennon, Esq.,** PO Box 4979, Orlando, FL 32802-4979 and **Warren B. Kwavnick, Esq**., PO Box 14546, Fort Lauderdale, FL 33302 on this _18__ day of __July____ 2008.

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Judicial Assistant