IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 09, 2014 Session

CEDRIC JONES, SR. v. STATE FARM FIRE & CASUALTY

Appeal from the Chancery Court for Davidson County
No. 111245IV Russell T. Perkins, Chancellor

No. M2014-00208-COA-R3-CV - Filed December 30, 2014

Suit for breach of contract to recover on a homeowners policy for losses sustained when policyholder's home was allegedly burglarized and was allegedly damaged as a result of a storm. Upon defendant's motion, the trial court granted summary judgment, holding that the insurance company defendant had demonstrated that policyholder could not meet his burden of proof as to any of his claims. After a thorough review of the record, we discern no error and affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and ANDY D. BENNETT, J., joined.

Cedric Jones, Sr., Whiteville, Tennessee, Pro Se.

Parks T. Chastain and Megan A. Carrick, Nashville, Tennessee, for the appellee, State Farm Fire & Casualty.

MEMORANDUM OPINION[1]

On September 12, 2011 Cedric Jones filed suit against State Farm Fire & Casualty Company, agent Phillip Braswell, and Ocwen Loan Servicing, LLC; alleging that State Farm

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[1] Tenn. R. Ct. App. 10 states:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

refused to honor his claims for losses sustained when his home was allegedly burglarized and also suffered damage as a result of a storm; he requested that State Farm pay his immediate living expenses, that the threatened foreclosure of his home be enjoined and that he receive $2,000.00 for emotional distress. On March 2, 2012 the court entered an order dismissing the case without prejudice pursuant to Tenn. R. Civ. P. 41.01(1).

On February 11, 2013 Mr. Jones filed a "Motion to Reopen" the case, which the court granted; he filed a motion to amend his complaint on April 30 which State Farm opposed. By order entered on June 3, the court granted the motion to amend and ordered that the motion to amend be construed as the amended complaint. On July 12 State Farm filed its answer to the amended complaint.

On December 4, State Farm filed a motion for summary judgment, supported by a Statement of Undisputed Material Facts, the affidavit of Phillip Braswell, the examination under oath of Mr. Jones, the deposition of Mr. Jones' ex-wife, and State Farm's response to Jones' first and third requests for production of documents; hearing was set for January 13, 2014. On December 16, Mr. Jones filed a motion to continue the hearing on summary judgment, stating that he was requesting until February 13, 2014, "to file an answer and to allow additional time to investigate and do further research for filing a motion for trial."[2] Mr. Jones filed a response to the motion for summary judgment and State Farm's statement of undisputed material facts, and his own statement of material facts on January 10, 2014.[3] State Farm filed a reply, the affidavit of its counsel Megan Carrick, and a response to Mr. Jones' statement of material facts.

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[2] As it respects a hearing on the motion, Mr. Jones stated "I EXPECT THIS MOTION TO BE HEARD AT THE EARLIEST AVAILABLE HEARING DATE. ORAL HEARING WAIVED."

[3] Attached to Jones' statement of undisputed material facts were: (1) an unofficial property record card listing Jones as the property owner and describing the residence at issue; (2) photos of the Jones' roof; (3) a letter from Lynn Driver, State Farm claims manager, to Kerry Rickard, investigator with the State of Tennessee Department of Commerce and Insurance, Consumer Insurance Services Section, relative to Jones' claim under the homeowners' policy; (4) a copy of pages from Jones' warranty deed and deed of trust and Jones' sworn statement in proof of loss; (5) a declarations page and renewal certificates for State Farm policy number 42-J4-2413-6, showing coverage at Jones home with State Farm from March 31, 2005 until March 31, 2011; (6) the Metropolitan Police Department incident report dated July 26, 2011, listing a burglary at Jones' home which occurred between 6:00 p.m. December 4, 2010 and 8:11 p.m. on June 27, 2011; (7) photos showing damage to the inside of Jones' home; and (8) a court order entered in the Eight Circuit Court for Davidson County on February 5, 2009, in the case of Cedric Jones v. Angel Jones, *inter alia*, striking Angel Jones' motion for possession of the marital home.

A hearing on the motions took place on January 17; the court entered an order on January 27 denying Jones' motion for a continuance, granting State Farm's motion for summary judgment, and dismissing Jones' case with prejudice. Mr. Jones appeals; the issue before us is whether the court erred in granting State Farm summary judgment.

A succinct statement of the standards to be applied to the trial court's resolution of motions for summary judgment in actions filed after July 1, 2011, as well as this court's review, was set forth in *Connell v. Scullark* as follows:

> A motion for summary judgment should be granted only "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 the moving party is entitled to a judgment as a matter of law." "The party seeking the summary judgment has the burden of demonstrating that no genuine disputes of material fact exist and that it is entitled to a judgment as a matter of law." "If reasonable minds could justifiably reach different conclusions based on the evidence at hand, then a genuine question of fact exists." "If, on the other hand, the evidence and the inferences reasonably drawn from the evidence would permit a reasonable person to reach only one conclusion, then no material factual dispute exists, and the question can be disposed of as a matter of law."
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> Because this lawsuit was filed in 2013, resolution of the motion for summary judgment is governed by Tennessee Code Annotated section 20-16-101, which provides:
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> > In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:
> >
> > (1) Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or
> >
> > (2) Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.
>
> Summary judgments do not benefit from a presumption of correctness on appeal, so we must make a fresh determination that the requirements of Rule

> 56 have been satisfied in each case. "The reviewing courts must also consider the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in the non-moving party's favor."

Connell v. Scullark, No. W2014-00587-COA-R3-CV, 2014 WL 6882298, at *1–2 (Tenn. Ct. App. Dec. 8, 2014) (internal citations omitted).

The evidence produced by State Farm demonstrated that Mr. Jones could not meet the his burden of showing that the loss for which he sought to recover was covered under the policy. The trial court made extensive findings of fact in this regard and set forth the legal basis for the grant of summary judgment. We have reviewed the record and agree that summary judgment was proper.

The record shows that Mr. Jones was incarcerated beginning in March 2010; Mr. Jones ex-wife resided in the home until September or October 2010, at which time she moved out of the home, leaving some furniture and other property at the home; coverage under the homeowners policy expired March 31, 2011; Mr. Jones was released from incarcerations and returned to the home on June 22, 2011. Mr. Jones was not aware of any roof damage at the time of his incarceration and his ex-wife did not witness storm damage to the roof or observe any shingles missing prior to her departure from the home. Inasmuch as it was Mr. Jones' burden to demonstrate that a covered loss has occurred within the terms of the policy, *see Massachusetts Mut. Life Ins. Co. v. Jefferson*, 104 S.W.3d 13, 22 (Tenn. Ct. App. 2002), he cannot show that any loss that he suffered was sustained while the policy was in effect.

In addition, the proof also shows that Mr. Jones' ex-wife was awarded all property in the home, marital as well as separate, by order of the Eighth Circuit Court; that the court authorized her to sell the property; and that she had several garage sales where she sold most of the personal property in the home and left what did not sell. Thus, Mr. Jones could not prove that he sustained a loss of any of his property caused by burglary.

For the foregoing reasons, the summary judgment was properly granted and the judgment of the Chancery Court is affirmed.

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RICHARD H. DINKINS, JUDGE