



Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-16-00773-CV

FARMERS TEXAS COUNTY MUTUAL INSURANCE COMPANY,
Appellant

v.

Jennifer L. **ZUNIGA** and Janet Northrup
as Trustee for the Bankruptcy Estate of Christopher J. Medina,
Appellees

From the 73rd Judicial District Court, Bexar County, Texas
Trial Court No. 2014-CI-11445
Honorable Cathleen M. Stryker, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: September 13, 2017

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

This appeal presents the novel issue of whether an automobile insurance policy which covers “damages for bodily injury” requires Farmers Texas County Mutual Insurance Company to pay punitive damages awarded in a lawsuit against its insured. The trial court granted summary judgment in favor of the appellees concluding the policy required Farmers to pay the punitive damages. Farmers appeals asserting the trial court erred in its interpretation of the policy. Farmers also appeals an order entered by a Harris County district court granting a motion to transfer venue

of the underlying cause to Bexar County. We affirm the order transferring venue but reverse the order granting summary judgment.

BACKGROUND

Jennifer Zuniga sued Christopher Medina for negligence and gross negligence to recover damages she sustained when the vehicle Medina was driving struck Zuniga from behind as she was walking. A jury awarded Zuniga \$93,244.91 in actual damages and, finding the harm to Zuniga resulted from gross negligence, also awarded Zuniga \$75,000 in punitive damages. The trial court signed a judgment based on the jury's verdict on March 3, 2014.¹

The vehicle Medina was driving was insured by Farmers, and Medina was a "covered person" as that term is used in the insurance policy. On May 30, 2014, Farmers filed a petition for declaratory relief against Medina and Zuniga in Harris County seeking a declaration that the punitive damages were not covered by the policy or, alternatively, if the punitive damages are covered by the policy, Texas public policy prohibits coverage for the punitive damages.

On June 30, 2014, Zuniga filed a motion to transfer venue of the cause from Harris County to Bexar County. One of the grounds on which Zuniga sought to transfer venue was for the convenience of the parties under section 15.002(b) of the Texas Civil Practice and Remedies Code. The Harris County court signed an order on March 7, 2016, granting the motion and transferring the case to Bexar County.²

On July 22, 2014, Zuniga filed an original petition in Bexar County seeking to recover the punitive damages from Farmers. In addition, Zuniga was assigned all of Medina's rights against

¹ The trial court's judgment was affirmed by this court on May 24, 2017. *See Zuniga v. Medina*, No. 04-14-00360-CV, 2017 WL 2261767 (Tex. App.—San Antonio May 24, 2017, no pet. h.) (mem. op.).

² Prior to the trial court's order, Medina filed bankruptcy; however, the bankruptcy stay terminated on January 13, 2015. Although the bankruptcy case was subsequently reinstated, the automatic stay was not reinstated upon the reopening of the bankruptcy case.

Farmers as a result of a turnover order, and she asserted additional claims against Farmers based on that assignment. On April 14, 2016, Zuniga filed a motion to consolidate her lawsuit, which was pending in the 73rd Judicial District Court of Bexar County, with the case transferred from Harris County, which was pending in the 166th Judicial District Court of Bexar County. The trial court granted the motion, and the cases were consolidated.

On April 27, 2016, Farmers filed a first amended motion for summary judgment. On June 30, 2016, the trial court signed an order denying Farmers's motion. Although Farmers initially filed a motion seeking the trial court's permission to file an interlocutory appeal of its order, the parties entered into a Rule 11 agreement to cancel the hearing on Farmers's motion conditioned upon the plaintiffs filing a motion for summary judgment within a week.

On August 2, 2016, Zuniga and Janet Northrup, the trustee for Medina's bankruptcy estate, filed a motion for summary judgment seeking a declaration that the punitive damages awarded to Zuniga were covered by the Farmers policy. Farmers filed a response to the motion. After a hearing, the trial court signed an order granting the motion "insofar that it seeks a determination that the punitive damages ... are covered under the automobile policy in question" and severing all other claims into a separate cause. Farmers appeals.

VENUE

In its second issue, Farmers challenges the order transferring venue of its lawsuit from Harris County to Bexar County. As previously noted, however, Zuniga asserted convenience of the parties as one of the grounds for transferring venue. Section 15.002(c) of the Texas Civil Practice and Remedies Code provides that a decision to transfer venue for the convenience of the parties is not grounds for appeal and is not reversible error. TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(c) (West 2017). Accordingly, we do not further address Farmers's second issue.

DID THE POLICY COVER PUNITIVE DAMAGES?

In its first issue, Farmers contends the trial court erred in concluding the policy covered punitive damages. Farmers asserts either the policy did not provide such coverage or Texas public policy prohibits such coverage.

“Determining whether exemplary damages for gross negligence are insurable requires a two-step analysis.” *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 655 (Tex. 2008). “First, we decide whether the plain language of the policy covers the exemplary damages sought in the underlying suit against the insured.” *Id.* “Second, if we conclude that the policy provides coverage, we determine whether the public policy of Texas allows or prohibits coverage in the circumstances of the underlying suit.” *Id.* Therefore, we first examine whether the plain language of the policy covers the punitive damages awarded to Zuinga.

A. Rules of Construction

Insurance policies are interpreted under the well-established rules of contract construction. *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 892 (Tex. 2017). “The goal of contract interpretation is to ascertain the parties’ true intent as expressed by the plain language they used.” *Id.* at 893. “‘Plain meaning’ is a watchword for contract interpretation because word choice evinces intent.” *Id.* The plain language of the contract controls, and “we assign terms their ordinary and generally accepted meaning unless the contract directs otherwise.” *Id.*

If the plain language of the contract “lends itself to a clear and definite legal meaning, the contract is not ambiguous and will be construed as a matter of law.” *Id.* “An ambiguity does not arise merely because a party offers an alternative conflicting interpretation, but only when the contract is actually susceptible to two or more reasonable interpretations.” *Id.* (internal quotations

omitted). ““The fact that the parties may disagree about the policy’s meaning does not create an ambiguity.”” *Id.* (quoting *State Farm Lloyds v. Page*, 315 S.W.3d 525, 527 (Tex. 2010)).

B. Farmers Insurance Policy

The insuring agreement in the Farmers insurance policy provides in pertinent part as follows:

Insuring Agreement

A. We will pay damages for bodily injury or property damage for which any **covered person** becomes legally responsible because of an auto accident. Property damage includes loss of use of the damaged property. Damages include prejudgment interest awarded against the **covered person**. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.

Supplementary Payments

In addition to our limit of liability, we will pay on behalf of a **covered person**:

3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.

5. Other reasonable expenses incurred at our request.

As previously noted, it is undisputed that Medina is a covered person and is legally responsible for the punitive damages.

C. Analysis

In their brief and in their motion, Zuniga and Northrup primarily rely on *Manriquez v. Mid-Century Ins. Co. of Tex.* to support their contention that the policy covers punitive damages. 779 S.W.2d 482 (Tex. App.—El Paso 1989, writ denied), *disapproved in part on other grounds*, *Trinity Universal Ins. Co. v. Cowan*, 945 S.W.2d 819, 822-23 (Tex. 1997). In *Manriquez*, the policy in

question contained the same language quoted from the Farmers policy. 779 S.W.3d at 483. The El Paso court first cited cases from other courts holding the policies in those cases covered exemplary damages for gross negligence. *Id.* at 484 (citing *Am. Home Assurance Co. v. Safway Steel Prods. Co.*, 743 S.W.2d 693 (Tex. App.—Austin 1987, writ denied); *Home Indem. Co. v. Tyler*, 522 S.W.2d 594 (Tex. App.—Houston [14th Dist.] 1975, writ ref’d n.r.e.) and *Dairyland Cty. Mut. Ins. Co. v. Wallgren*, 477 S.W.2d 341 (Tex. Civ. App.—Fort Worth 1972, writ ref’d n.r.e.)). The El Paso court noted the policies in those cases provided for the payment of “all sums which the insured shall become legally obligated to pay as damages because of ... bodily injury,” and also noted the courts deciding those cases “emphasize the words ‘all sums’ as being the important inclusive considerations.” *Id.* The El Paso court further reasoned:

In determining whether these words [“all sums”] include coverage for punitive damages, a majority of courts have used the following rationale: (1) the average insured, in the absence of an express policy exclusion from liability from punitive damages, would assume that the term “damages” would include punitive damages, since they would become by judgment a “sum” that the insured would be legally obligated to pay; (2) because the insurer drafted the policy and could have made clear its intention to exclude coverage for punitive damages, the rules of construction require it to bear the burden of ambiguity; and (3) punitive damages are covered because they always “arise” out of the underlying action for injury.

Id. Although acknowledging the absence of the phrase “all sums” in the policy under consideration, the El Paso court held punitive damages were covered, asserting an average insured “would assume damages would include [punitive] damages,” and the insurer could have made the policy clear that punitive damages would not be covered in drafting the policy. *Id.*

In *Fairfield Ins. Co.*, the Fifth Circuit certified the following question for the Texas Supreme Court to answer, “Does Texas public policy prohibit a liability insurance provider from indemnifying an award for punitive damages imposed on its insured because of gross negligence?” 246 S.W.3d at 654. In that case, the insurance policies in question were workers’ compensation

and employers' liability policies, and the Texas Supreme Court "presume[d] that the policy language cover[ed] the exemplary damages sought," thereby limiting its discussion to whether Texas public policy prohibited such coverage. *Id.* at 654, 656.

In a concurring opinion, however, Justice Hecht noted the El Paso court's holding in *Manriquez* asserting:

Standard form personal automobile policies do not state specifically whether punitive damages are covered, and while two courts have concluded that punitive damages are damages for bodily injury covered by automobile policies, that position has been uniformly rejected in the context of uninsured and underinsured motorist coverage and is therefore dubious at best.

246 S.W.3d at 683 (Hecht, J., concurring) (citing *Dairyland Cty. Mut. Ins. Co.*, 477 S.W.2d at 342 and *Manriquez*, 779 S.W.2d at 484-85).³ We agree that the holding in *Manriquez* is dubious. Although the El Paso court recognized the policy language in the cited cases included the "all sums" language which was absent from the policy under consideration, the court did not comment on the fact that the policy language in those cases also broadly required the insurer to pay "all sums" the insured was legally obligated to pay "because of" bodily injury.⁴ Unlike that broader language, the policy language in *Manriquez* and in the instant case limits payment to "damages for bodily injury."

In *Fairfield Ins. Co.*, the Texas Supreme Court recognized courts have struggled with the insurability of exemplary damages nationwide. 246 S.W.3d at 661. One of the cases cited by the court was *Ky. Cent. Ins. Co. v. Schneider*, 15 S.W.3d 373 (Ky. 2000). *Id.* at n.12. Although the policy in that case contained the broader phrase "because of bodily injury" found in the cases cited

³ The policy in *Dairyland Cty. Mutual Ins. Co.* includes the "all sums" language.

⁴ We note the phrase "because of bodily injury" has been held to be ambiguous because "[o]ne interpretation suggests that the insured is entitled to recover any damages that arise *because of bodily injury* [while] another suggests that the insured is only entitled [to] recover damages that are *derived from the bodily injury*." *State Farm Mut. Auto. Ins. Co. v. Shaffer*, 888 S.W.2d 146, 148-49 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (emphasis in original); *see also Zurich Am. Ins. Co. v. Nokia, Inc.*, 268 S.W.3d 487, 499 (Tex. 2008) (noting phrase "damages because of bodily injury" is not subject to rigid reading but merely underscores the fact that insurance is compensatory).

by the El Paso court in *Manriquez*, the Kentucky Supreme Court noted the definitional difference between “damages for bodily injury” and “punitive damages” as follows:

Damages for bodily injury are regarded as compensatory damages and include the expense of cure, value of time lost, fair compensation for physical and mental suffering caused by the injury, and for any permanent reduction of the power to earn money. The object of compensatory damages is to make the injured party whole to the extent that it is possible to measure his injury in terms of money. The object is not to place the plaintiff in a better position than he would have been had the wrong not been done.

Punitive damages are damages, other than compensatory and nominal damages, awarded against a person to punish and to discourage him and others from similar conduct in the future. It is an allowance of smart money as the penalty for egregious conduct, or even ... as an expression of the indignation of the jury. From the injured party’s perspective, punitive damages represent an additional, non-compensatory award based upon public policy concerns largely irrelevant to the issue of compensation.

Id. at 374-75 (internal quotations and citations omitted). We agree with this definitional distinction and hold the plain language of the Farmers policy in the instant case, which covers “damages for bodily injury,” does not cover punitive damages.⁵

RENDITION OR REMAND?

In its brief, Farmers asks this court to render judgment that the policy does not cover punitive damages. Although our holding that the policy does not cover punitive damages becomes law of the case, the parties did not file competing motions for summary judgment in the trial court. Instead, Zuniga filed the only motion for summary judgment on the ground that the automobile policy covered punitive damages. Although we hold the trial court erred in granting Zuniga’s motion, we must remand the cause to the trial court for further proceedings. *See Dacus v. Parker*, 466 S.W.3d 820, 829 (Tex. 2015) (remanding cause because only appellee moved for summary

⁵ Because we hold the plain language of the policy does not cover punitive damages, we need not address Farmers’s public policy argument. *See Fairfield Ins. Co.*, 246 S.W.3d at 655; *see also* TEX. R. APP. P. 47.1 (providing opinions should only address issues necessary to the final disposition of the appeal).

judgment); *see also City of Houston v. Dacus*, No. 14-16-00123-CV, 2017 WL 536647, at *1 (Tex. App.—Houston [14th Dist.] Feb. 9, 2017, pet. denied) (mem. op.) (noting Texas Supreme Court remanded cause because a cross-motion for summary judgment was not filed and applying law of the case to affirm the summary judgment the trial court granted on remand).

CONCLUSION

We affirm the trial court's order transferring venue. Because the trial court erred in concluding the automobile policy in question covered punitive damages, we reverse the trial court's judgment and remand the cause to the trial court for further proceedings.

Patricia O. Alvarez, Justice