

NO. COA14-468

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

SANTIAGO ESTRADA,

Employee, Plaintiff,

v.

From the North Carolina
Industrial Commission
IC No. X02405

TIMBER STRUCTURES, INC.,

Employer,

and

AMERICAN ZURICH INSURANCE COMPANY,

Carrier

and

JAMES C. CERATT, JR., d/b/a/
TIMBER STRUCTURES BUILDERS,

Non-Insured Employer,

Defendants.

Appeal by plaintiff and defendants from the Opinion and Award entered 24 January 2014 by the North Carolina Industrial Commission. Heard in the Court of Appeals 8 October 2014.

Hedrick Kepley, PLLC, by Jeffrey M. Hedrick, for plaintiff-appellant.

Patrick Harper & Dixon L.L.P., by Michael P. Thomas, for defendant-appellants Timber Structures, Inc., and James C. Ceratt, Jr., d/b/a Timber Structures Builders.

Hedrick Gardner Kincheloe & Garofalo, LLP, by Shelley W. Coleman and M. Duane Jones, for defendant-appellee American Zurich Insurance Company.

STEELMAN, Judge.

Where defendants failed to pay the renewal premium due on their workers' compensation insurance policy by the expiration date of the policy, the policy expired. Neither N.C. Gen. Stat. § § 58-36-105 nor 58-36-110 govern the expiration of a workers' compensation insurance policy at the end of the policy period.

I. Factual and Procedural History

James C. Ceratt, Jr., (with James C. Ceratt, Jr., d/b/a Timber Structures Builders, collectively, "defendants") is a licensed general contractor. Santiago Estrada Flores (plaintiff) was employed as a laborer and carpenter for defendants. Prior to 2009, defendants had several workers' compensation insurance policies canceled due to defendants' failure to pay the required premium. As a result, in 2009 defendants obtained workers' compensation insurance through the North Carolina Rate Bureau, which assigned defendant-appellee American Zurich Insurance Company ("Zurich") to offer defendants workers' compensation insurance. Upon defendants' payment of a premium deposit of \$850.00, Zurich issued Policy Number 6ZZ0B-9856M64-8-09 to defendants for the period 4 August 2009 through 4 August 2010.

On 25 May 2010 Zurich mailed defendants a letter offering to renew the workers' compensation insurance policy. At the top of the letter was printed "EXPIRATION DATE 080410." The letter stated in relevant part that:

Enclosed is your renewal quotation[.]

. . .

IMPORTANT NOTICE

All Premiums billed under your expiring policy must be paid before your policy can be renewed. . . .

In order to avoid a lapse in coverage, your renewal payment must be received by the expiration date shown on your bill. Depending on the plan requirements, if payment is not received by the expiration date, either the policy will be issued with a lapse in coverage or your premium check will be returned and no policy will be issued.

The letter was accompanied by a "Premium Notice" listing the "Date of Bill" as 25 May 2010, and stating that:

"Your policy will expire on the expiration date if the renewal premium is not paid. If the required deposit is received by us within 60 days after policy expiration, your renewal will be effective the day after the U.S. postmark date appearing on the renewal deposit envelope. Monies received for deposit more than 60 days after the expiration date will be returned and the policy will not be reinstated."

The Premium Notice also included a chart reiterating the relevant payment amount, due date, and expiration date:

Amount Due	\$1000
Date Due	7-21-10
Expiration Date	08-04-10

Mr. Ceratt admitted at the hearing that he did not make a payment towards the premium prior to the expiration date of 4 August 2010.

On 19 August 2010 plaintiff suffered an injury by accident arising out of and in the course of his employment for defendants. On 3 September 2010 plaintiff filed an Industrial Commission Form 18 notifying defendants of his injury and seeking workers' compensation medical and disability benefits.¹ The Form 18 named Zurich as the workers' compensation insurance carrier. Zurich denied "that a workers' compensation policy was in effect for [defendants] on the date of [plaintiff's] accident." A hearing was conducted on plaintiff's claim before Industrial Commission Deputy Commissioner Adrian Phillips on 23 July 2012. On 20 June 2013 Deputy Commissioner Phillips filed an Opinion and Award holding that defendants' workers' compensation insurance had expired at the time of plaintiff's injury and awarding plaintiff medical and temporary total disability

¹ On 19 August 2010 plaintiff was working for defendants at the Blackberry Creek Mattress Store in Boone, N.C. Plaintiff initially sought compensation from the store, but it was dismissed as a defendant and is not a party to this appeal.

benefits, to be paid by defendants. Both plaintiff and defendants appealed to the Full Commission. On 18 September 2013 the Commission filed an order dismissing defendants' appeal for failure to timely file an Industrial Commission Form 44, Application for Review.

On 24 January 2014 the Full Commission filed an order affirming the decision of the Deputy Commissioner with modifications. The order noted the dismissal of defendants' appeal and specified that "only Plaintiff's appeal remains before the Full Commission for review." The Commission found in relevant part that:

. . .

24. Defendant-Employer James C. Ceratt, Jr., d/b/a Timber Structures Builders ["Ceratt"] . . . obtained a policy of workers' compensation coverage from Defendant-Carrier American Zurich Insurance Company ["Zurich"], with an initial policy period covering August 4, 2009 to August 4, 2010[.]

25. On or around May 25, 2010, [Zurich] sent [Ceratt] a "Workers' Compensation Insurance Plan Letter" (hereinafter "the letter") providing a policy renewal quote. The letter informed [Ceratt] that "in order to avoid a lapse in coverage, your renewal payment must be received by the expiration date shown on your bill." Along with the letter, [Zurich] provided [Ceratt] a "Premium Notice" indicating a "Date of Bill" of May 25, 2010, an amount of \$1000.00 due . . . July 21,

2010, and an "Expiration Date" of August 4, 2010.

. . .

33. After [Ceratt] learned that [he] was not covered by the policy, he sought to renew the policy with [Zurich]. On September 9, 2010, [Zurich] issued a "renewal" of [the policy] stating a retroactive policy period from August 24, 2010 to August 4, 2011[.]

34. [Ceratt] was uninsured from 12:01 a.m. August 4, 2010 through August 24, 2010.

. . .

38. Based upon a preponderance of the evidence in view of the entire record, the Full Commission finds that [Zurich] did not insure [Ceratt] on Plaintiff's date of injury.

The Commission held that defendants' workers' compensation insurance policy expired on 4 August 2010 due to their failure to submit payment prior to the expiration date, and that defendants were not insured at the time of plaintiff's accident.

Plaintiff and defendants appeal.

II. Standard of Review

"The standard of review in workers' compensation cases has been firmly established by the General Assembly and by numerous decisions of this Court. Under the Workers' Compensation Act, '[t]he Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony.' Therefore, on appeal from an award of the Industrial Commission,

review is limited to consideration of whether competent evidence supports the Commission's findings of fact and whether the findings support the Commission's conclusions of law. This 'court's duty goes no further than to determine whether the record contains any evidence tending to support the finding.'" *Richardson v. Maxim Healthcare/Allegis Grp.*, 362 N.C. 657, 660, 669 S.E.2d 582, 584 (2008) (quoting *Anderson v. Construction Co.*, 265 N.C. 431, 433-34, 144 S.E.2d 272, 274 (1965), and citing *Adams v. AVX Corp.*, 349 N.C. 676, 681, 509 S.E.2d 411, 414 (1998) (other citations omitted). Findings that are not challenged on appeal are "presumed to be supported by competent evidence" and are "conclusively established on appeal." *Johnson v. Herbie's Place*, 157 N.C. App. 168, 180, 579 S.E.2d 110, 118 (2003). The "Commission's conclusions of law are reviewed *de novo*." *McRae v. Toastmaster, Inc.*, 358 N.C. 488, 496, 597 S.E.2d 695, 701 (2004) (citation omitted).

III. Workers' Compensation Insurance

The sole issue on appeal is whether a workers' compensation insurance policy covered defendants at the time of plaintiff's injury. We hold that the policy issued by Zurich expired on 4 August 2010 and was not in effect on 19 August 2010, the date that plaintiff was injured.

"We first note the well-settled principle that an insurance policy is a contract and its provisions govern the rights and duties of the parties thereto.'" *N.C. Farm Bureau Mut. Ins. Co. v. Sadler*, 365 N.C. 178, 182, 711 S.E.2d 114, 117 (2011) (quoting *Fid. Bankers Life Ins. Co. v. Dortch*, 318 N.C. 378, 380, 348 S.E.2d 794, 796 (1986)). "This Court's review of contract provisions is *de novo*. 'It is well established that contracts for insurance are to be interpreted under the same rules of law as are applicable to other written contracts.'" *Fulford v. Jenkins*, 195 N.C. App. 402, 404, 672 S.E.2d 759, 760 (2009) (citing *Sutton v. Messer*, 173 N.C. App. 521, 525, 620 S.E.2d 19, 22 (2005), and quoting *Chavis v. Southern Life Ins. Co.*, 318 N.C. 259, 262, 347 S.E.2d 425, 427 (1986)). In addition:

The cardinal principle pertaining to the construction and interpretation of insurance contracts is that the intention of the parties should control. If not ambiguous or uncertain, the express language the parties have used should be given effect, and the intention of the parties must be derived from the language employed. . . . If the intention of the parties is clear, the courts have no authority to change the contract in any particular or to disregard the express language the parties have used.

Lineberry v. Trust Co., 238 N.C. 264, 267, 77 S.E.2d 652, 654 (1953).

N.C. Gen. Stat. § 97-99(a) provides that a "policy for the insurance of the compensation in this Article, or against liability therefor, shall be deemed to be made subject to the provisions of this Article." "[W]hen a statute is applicable to the terms of an insurance policy, the provisions of the statute become a part of the policy, as if written into it. If the terms of the statute and the policy conflict, the statute prevails." *Progressive American Ins. Co. v. Vasquez*, 350 N.C. 386, 392, 515 S.E.2d 8, 12 (1999) (quoting *Isenhour v. Universal Underwriters Ins. Co.*, 341 N.C. 597, 605, 461 S.E.2d 317, 322 (1995)).

In this case, the parties have discussed two statutes with relevance to workers' compensation insurance policies. N.C. Gen. Stat. § 58-36-105(a) provides in pertinent part that "[n]o policy of workers' compensation insurance or employers' liability insurance written in connection with a policy of workers' compensation insurance shall be cancelled by the insurer before the expiration of the term or anniversary date stated in the policy and without the prior written consent of the insured, except for any one of the following reasons: (1) Nonpayment of premium in accordance with the policy terms. . . ." (emphasis added). The statute expressly limits its application to cancellation of an insurance policy before the end of the policy term. We hold that N.C. Gen. Stat. § 58-36-105

does not apply to the expiration of a policy of workers' compensation insurance at the end of the term, based upon the insured's failure to renew the policy.

N.C. Gen. Stat. § 58-36-110(a) provides that "[n]o insurer shall refuse to renew a policy of workers' compensation insurance or employers' liability insurance written in connection with a policy of workers' compensation insurance except in accordance with the provisions of this section, and any nonrenewal attempted or made that is not in compliance with this section is not effective. . . ." This statute only applies to a situation in which the insurer refuses to renew a policy. As we held in *Zaldana v. Smith*, ___ N.C. App. ___, 749 S.E.2d 461 (2013), *disc. review denied*, ___ N.C. ___, 758 S.E.2d 869 (2014):

"The plain meaning of 'refuse' is 'to indicate unwillingness to do.' The American Heritage College Dictionary 1148 (3rd ed. 1993). An insurer, therefore, 'refuses to renew' a policy when the insurer indicates an unwillingness to renew the policy." . . . An insurer cannot 'indicate an unwillingness' to renew a policy merely by letting it expire under its own express terms. At a minimum, an insurer must, by word or action, specifically indicate to the insured that it is unwilling to renew the policy at issue.

Zaldana, ___ N.C. App. at ___, 749 S.E.2d at 463 (quoting *Associates Fin. Servs. of Am. v. N.C. Farm Bureau Mut. Ins. Co.*, 137 N.C. App. 526, 531, 528 S.E.2d 621, 624 (2000)). Based on

the statutory language and on *Zaldana*, we hold that N.C. Gen. Stat. § 58-36-110 is only applicable to a situation in which an insurer "refuses to renew" a policy, and is not relevant to a situation in which the insurer is willing to renew an insurance policy but the insured fails to submit a premium payment by the expiration date.

The relevant facts of this case are not in dispute and establish that defendants' workers' compensation insurance policy expired on 4 August 2010 because defendants failed to make a premium payment by that date. Therefore, on 19 August 2010, the date of plaintiff's injury, defendants were not insured under the policy issued by Zurich.

In arguing for a contrary result, appellants do not challenge the evidentiary support for the Commission's factual findings that (1) Zurich sent defendants a letter on 25 May 2010 stating that it was willing to renew defendants' workers' compensation insurance and that a premium payment of \$1000 was due by 4 August 2010; (2) the letter warned that the policy would expire on 4 August 2010 if no payment was received, and; (3) defendants made no payments until after the date of plaintiff's injury. Instead, appellants argue that, although Zurich was neither cancelling defendants' insurance policy prior to its expiration date nor refusing to renew the policy, Zurich

was nonetheless required to comply with the procedures set out in N.C. Gen. Stat. § 58-36-105 and § 58-36-110. Appellants make similar arguments regarding the analogous provisions of the Rules promulgated by the Rate Bureau. As discussed above, these statutes do not apply in the factual context of the present case, in which Zurich did not cancel defendants' insurance policy before its term expired, and was willing to renew the policy for another year. Simply put, defendants failed to pay the premium required to renew the policy and, as a result, did not have workers' compensation insurance coverage on the date of plaintiff's injury.

Conclusion

We conclude that the Full Commission did not err by ruling that defendants' workers' compensation insurance expired on 4 August 2010 and that its Opinion and Award should be

AFFIRMED.

Judges CALABRIA and McCULLOUGH concur.