STATE OF MICHIGAN

COURT OF APPEALS

HARBOR HOUSE, INC.,

Plaintiff-Appellee,

v

NORTH POINTE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
May 9, 1997

No. 192419
Wayne Circuit Court
LC No. 95-529829 CK

Before: McDonald, P.J., and Reilly and O'Connell, JJ>

PER CURIAM.

In this declaratory judgment action, defendant, North Pointe Insurance Company, appeals as of right the January 11, 1995, order of the Wayne Circuit Court granting summary disposition in favor of plaintiff, Harbor House, Inc., pursuant to MCR 2.116(C)(9) and (10). We affirm.

North Pointe issued a liquor liability insurance policy to Harbor House covering the period from March 14, 1994, to March 14, 1995. Thereafter, Harbor House purchased a liquor liability policy from First Security Casualty Company effective January 12, 1995, to January 12, 1996. In February, 1995, Harbor House sent a cancellation request to North Pointe on behalf of Harbor House, requesting that the liquor liability policy be canceled effective January 21, 1995. On February 10, 1995, North Pointe sent notice of the cancellation to the MLCC. The notice of cancellation sent to the MLCC by North Pointe indicated that the cancellation would take effect on March 14, 1995. Soon thereafter, North Pointe inquired as to whether the MLCC had received a replacement proof of financial responsibility, and was informed by the MLCC that it had received a replacement proof of financial responsibility from First Security Casualty Company on behalf of Harbor House, indicating that First Security Casualty Company had issued a liquor liability policy to Harbor House with an effective date of January 12, 1995. Patricia Tudor, an underwriting assistant at North Pointe, assumed that because Harbor House's policy with First Security Casualty Company was to take effect on January 12, 1995, the January 21, 1995, cancellation date indicated on the form requesting cancellation of the North Pointe policy must have been a typographical error, and Harbor House must have actually intended the date of the cancellation of the North Pointe policy to be January 12, 1995. Therefore, North Pointe canceled Harbor House's liquor liability policy retroactively to January 12, 1995.

On March 7, 1995, Erin Gutz filed a civil action in Wayne Circuit Court against Harbor House and Michael Ian Culp, seeking recovery for injuries she sustained in an automobile accident on January 18, 1995, when an automobile driven by Culp collided with the automobile she was driving. Gutz alleged that Culp became visibly intoxicated at J. Dubs Night Club, which was operated by Harbor House, and that Culp was served alcohol at the J. Dubs Night Club while he was visibly intoxicated. Harbor House contacted North Pointe and requested that North Pointe provide it with a defense in the action brought by Gutz. North Pointe asserted that it was not responsible for providing Harbor House with a defense because the policy had been canceled, and forwarded the summons and complaint to First security Casualty Company, who assumed Harbor House's defense.

Plaintiff filed the instant declaratory judgment action on October 10, 1995, requesting that the court declare that North Pointe owed a duty to defend and provide coverage to Harbor House for the allegations made against Harbor House in the underlying action filed by Erin Gutz on a pro rata basis with First Security Casualty Company. Plaintiff thereafter filed a motion for summary disposition pursuant to MCR 2.116(C)(9) and (10), which the trial court granted.

Defendant argues that the trial court erred in finding that the Michigan Liquor Control Act, MCL 436.1, *et seq*., MSA 18.971, *et seq*. prohibited defendant from retroactively canceling the liquor liability policy it issued to plaintiff. We disagree.

MCL 436.22g; MSA 18.933(7) provides:

> No false statement or breach of authority or act or omission on the part of the insured shall vitiate this insurance[1], unless the intention of the insured to conceal a hazard of perpetuating fraud is proven; and this policy cannot be canceled by the insured or the insurance company without first giving thirty days' written notice to the Michigan liquor control commission in Lansing, Michigan.

Furthermore, MCL 436.22d; MSA 19.993(4) provides:

> The insurer shall file with the liquor control commission, at Lansing, Michigan, at least 30 days before the effectiveness of any termination or cancellation of the contract or policy, a notice giving the date at which it is proposed to terminate or cancel the contract or policy. Any termination of the contract or policy shall not be effective as far as the insured covered thereby is concerned until 30 days after such notice of the proposed termination or cancellation is received by the liquor control commission.

In addition, MCL 436.22a; MSA 18.933(1)(7) provides:

> An insured retail licensee shall not cancel any such liquor liability insurance except upon thirty days' prior written notice to the commission and, beginning April 1, 1988, unless new proof of financial responsibility complying with this section is procured by the retail licensee and delivered to the commission prior to the expiration of the 30-day period, the license of that licensee shall be revoked.

The primary goal of judicial interpretation of statutes is to ascertain the intent of the Legislature. *Farrington v Total petroleum Inc*, 442 Mich 201; 501 NW2d 76 (1993). The Legislature is presumed to have intended the meaning it plainly expressed, and if the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *Id*.

The previously stated sections of the Liquor Control Act clearly and unambiguously provide that the cancellation of a liquor liability policy may not be canceled until thirty days after the MLCC receives notice of the cancellation. Furthermore, in this case, the accident on which the underlying lawsuit is based occurred on January 18, 1995, and plaintiff did not attempt to cancel the policy until February, 1995. Defendant's liability became fixed and absolute as of January 18, 1995, and no subsequent attempts by either the insured or the insurer to cancel the policy could negate that liability. *Madar v League General Insurance Company*, 152 Mich App 734; 394 NW2d 90 (1986); *DAIIE v Ayvazian*, 62 Mich App 94, 99-100; 233 NW2d 200 (1975).

Because we find that defendant was prohibited by law from canceling the liquor liability policy retroactively, we need not address defendant's argument that the terms of the liquor liability policy did not prohibit retroactive cancellation.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell

[1] Plaintiff, as a retail liquor licensee, was required to have a liquor liability insurance policy. MCL 436.22a; MSA 18.933(1).