

IN THE COURT OF APPEALS 07/02/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00466 COA

BILLY MOOREHEAD AND FIRST SOUTH PRODUCTION CREDIT ASSOCIATION

APPELLANT

v.

BANKER'S STANDARD INSURANCE COMPANY, A CIGNA INSURANCE COMPANY

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HENRY L. LACKEY

COURT FROM WHICH APPEALED: UNION COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CHARLES R. BRETT

ATTORNEY FOR APPELLEE:

THOMAS A. WICKER

RALPH L. HOLLAND

NATURE OF THE CASE: INSURANCE (BAD FAITH SUIT)

TRIAL COURT DISPOSITION: DIRECTED VERDICT FOR BANKER'S STANDARD
INSURANCE COMPANY

BEFORE THOMAS, P.J., KING, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Billy Moorehead appeals a directed verdict in favor of Banker's Standard Insurance Company in his suit against Banker's alleging bad faith denial of an insurance claim for the loss of a stallion named Two-Eyed Levi. Moorehead contends that the trial court erred in its determination of the parties' agency relationships, of fact issues concerning the procedure by which Moorehead's policy was canceled, and of the application of waiver and estoppel to the case. We affirm.

FACTS

In Moorehead's purchase of a stallion, he was required to obtain mortality insurance on the horse. He secured coverage through Newton Baker Insurance Services which obtained a policy from Banker's. The premium was paid through financing provided by Premium Financing Specialists. In its financing agreement with Moorehead, Premium Financing was appointed as Moorehead's attorney-in-fact so that, if Moorehead defaulted in his payments to Premium Financing, Premium Financing could, in turn, cancel the insurance policy.

After making several payments, Moorehead defaulted and, on January 16, 1990, Premium Financing as Moorehead's agent mailed a notice of intent to cancel the policy to Moorehead and Newton Baker as agent for Banker's. After no payment was received from Moorehead, Premium Financing mailed a notice of cancellation to Moorehead and Newton Baker. An endorsement canceling the policy on February 3, 1990, was issued to Newton Baker, and the premium paid by Premium Financing was subsequently refunded.

On March 17, 1990, the stallion died. Moorehead called North American Livestock, a company providing claims adjustment services to Banker's, and he was told to obtain an autopsy in anticipation of making a claim under his policy. Moorehead's policy required, as a precondition for making any mortality claim, that an autopsy be obtained at his expense and submitted along with the claim. The autopsy was performed, and the horse buried. Moorehead's subsequent claim under his policy was denied on the basis that the policy had been canceled.

DISCUSSION

In our review of the directed verdict, we view the evidence in the light most favorable to Moorehead to determine whether the evidence was insufficient to support his case. *Lewis v. Griffith*, 664 So. 2d 177, 188 (Miss. 1995) (citation omitted). Under this review, we conclude that the trial court did not err in directing a verdict in favor of Banker's. Under the facts of this case, at the close of Moorehead's case, there were no questions of fact for the jury to resolve—only a question of law for the trial court.

I. Newton Baker's Agency

Moorehead argues on appeal that Newton Baker was not Banker's agent so that Premium Financing's notice of cancellation to Newton Baker was not effective as notice to Banker's. To defeat Moorehead's theory at trial that the notice of cancellation to Newton Baker was ineffective to cancel the policy, Banker's faced the task of establishing that Newton Baker was its agent. The

burden of proving agency was on Banker's as the party claiming the agency relationship. *United States Fidelity & Guar. Co. v. Arrington*, 255 So. 2d 652, 654 (Miss. 1971). Banker's met its burden of proof. A representative of Banker's testified at trial that Newton Baker was its agent with authority to solicit insurance policies on the company's behalf. In fact, Moorehead himself developed testimony indicating that documents received by Newton Baker would probably be transmitted to Banker's by virtue of their agency relationship. This testimony was unrebutted. Consistent with this proof, it was properly concluded that the notice of cancellation issued to Newton Baker operated as an order to Banker's to effect cancellation of the policy. *See Malta Life Ins. Co. v. Estate of Washington*, 552 So. 2d 827, 828 (Miss. 1989) (citations omitted) (holding that insurance company, like other principals, is bound by notice to its agent).

2. Proof of Cancellation

Moorehead contends that there was no proof that Banker's received notice of cancellation from Premium Financing. This argument is likewise without merit. The unrebutted testimony presented at trial was that Premium Financing mailed and Banker's received instructions to cancel the policy and that Banker's subsequently issued an endorsement canceling the policy. In light of these facts and the absence of any countervailing proof, Moorehead's position is completely without support.

Nevertheless, Moorehead asserts that the cancellation was ineffective because it was not received by Banker's prior to the loss of the stallion. Moorehead loses sight of the relationship between Premium Financing and himself. Moorehead had contractually authorized Premium Financing as his own agent to cancel the policy if he stopped making loan payments to them. The order to cancel the policy issued by someone standing in the shoes of Moorehead himself, effective prior to the date of the loss, was received and acted upon by Banker's. The proof on this issue was unrebutted and, accordingly, Moorehead's argument is unavailing for him.

3. Autopsy Request As Waiver

Moorehead argues that the instruction from North American to him to perform an autopsy of the stallion at his own expense constitutes waiver of the right to deny coverage. Again, we must disagree. North American's request was consistent with the policy and the procedure for filing claims—not consistent with a concession of coverage.

Adjusting a loss by requesting an investigation at the insured's expense to determine whether a covered claim is present is not a waiver of the authority to deny the claim. *Michigan Millers Mut. Ins. Co. v. Lindsey*, 285 So. 2d 908, 911-12 (Miss. 1973). This is not a case in which the insurance company has undertaken any efforts to protect the insured's interests, causing the insured to detrimentally rely on the apparent promise that his claim is covered. *See, e.g., Providence Washington Ins. Co. v. Weaver*, 242 Miss. 141, 151, 133 So. 2d 635, 639 (1961). Instead, as part of the process of receiving and evaluating the claim, North American requested an autopsy without the promise of coverage for the loss of the animal. In such circumstances, waiver is not a theory available to compel an insurance company to provide compensation for the loss in the face of a canceled policy.

THE JUDGMENT OF THE UNION COUNTY CIRCUIT COURT IS AFFIRMED AND ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANTS.

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, DIAZ, KING, McMILLIN,
AND PAYNE, JJ., CONCUR.**

COLEMAN, J., NOT PARTICIPATING.