No. 125441

Appeal to The Illinois Supreme Court

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Plaintiff-Appellant,

v.

KENT ELMORE and ARDITH SHELDON ELMORE,
Defendants-Appellees.

Appeal from Appellate Court, Fifth District
No. 5-18-0038

Appeal from Effingham County, Illinois
Case No. 16 MR 137
Honorable Judge Allen Lolie

REPLY BRIEF OF APPELLANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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ARGUMENT

I. The Term "Mechanical Device" is Capable of Only One Reasonable Interpretation.

Elmore claims that State Farm is asking that the term "mechanical device" be viewed in a "vacuum" without considering the "policy as a whole" or "other factors" reviewed by the appellate court. According to Elmore, State Farm is attempting to "ignore" the purpose of the policy (Appellee's Brief, p. 7). The reality is quite the opposite.

The appellate court distinguished foreign authority because those cases, (which found the exclusion unambiguous) featured equipment which had their own power source or motor. But the State Farm policy does not state that "self-powered" or "motorized" mechanical devices are excluded. The policy only states that "mechanical devices" are excluded. The appellate court added a qualification to the policy which was not contained in any dictionary definition, any case law or the policy itself. Elmore has failed to explain how such an "interpretation" by the appellate court could ever be considered "reasonable."

Elmore claims that State Farm is asking the court to apply the "broadest interpretation" of the term mechanical. To the contrary, State Farm is only asking this Court to utilize the common meaning as embodied in the dictionary definition. Elmore criticizes the definition of "mechanical," but Elmore's criticism is with Merriam-Webster, not State Farm. It is defendant's refusal to accept the

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common meaning of the term that would grossly expand vehicle liability coverage to areas not intended by the coverage.

According to Elmore, a "mechanical device" could only be an item that operates "under its own power." (Appellee Brief, p. 9). Accepting Elmore's "self-powered" assertion, any farm implement that is powered by a PTO shaft would never qualify as a "mechanical device." Elmore would remove any number of mechanical devices such as silage blowers, rotary cutters and flail mowers from this definition. Each of these farm implements is powered by a PTO shaft from a tractor. Each is operated by a "machine" – a tractor. Each is a "machine" as defined by Merriam-Webster, and each is a "mechanically" operated device for performing a task on the farm. But under defendant's and the appellate court's interpretation, these machines would never meet the definition of "mechanical device." Defendant cannot seriously contend that the grain auger here was not "mechanically" operated by a "machine." Elmore's attempt to defend the appellate court's modification of the policy terms here is untenable and defies logic.

II. Under The Guise of "Ambiguity" Defendant Would Have This Court Ignore the Language of the Auto Policy.

Elmore admits that the Court's primary objective in construing the language of the policy is to ascertain and enforce the intentions of the parties as expressed in the policy. As this Court has previously held, the Court must take into account the type of insurance for which the parties have contracted as well as

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the subject matter that is insured and the purpose of the entire contract. *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993).

The policy at issue is a personal automobile policy. The State Farm policy is not a comprehensive general liability policy. It is not a farm liability policy (C. 150). The policy identifies as named insureds Sheldon & Betty Elmore. The declaration sheet lists as "your car", a 2002 International Model 4900 truck. Among other coverages, the policy provides liability, uninsured/underinsured coverage and medical pay benefits (C. 148). The bottom of the declaration sheet lists endorsements. The appellate court seized upon one of those endorsements, number 6055ZZ Farm Truck (Coverage while towing trailers and farm implements) Use-Farming (C. 148). Elmore repeatedly describes the vehicle as a "grain truck." But nowhere on the declaration sheet, the policy body or the endorsements is the truck described as a "grain truck." The "farm truck" endorsement also specifically *excludes* liability coverage for bodily injuries arising out of the operation of "any farm implement." (C. 199).

Elmore would have this Court ignore the actual policy language. Instead, Elmore asks this court to redraft and distort the policy to provide coverage for an incident which was never intended to come within the parameters of the coverage. Nothing in the policy suggests that the auto liability coverage was intended to apply to a wide ranging number of farm implements which could cause personal injury. To the contrary, the policy specifically *excludes* such coverage. That this auto policy plainly does not provide such coverage is anything *but* a "red herring"

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as described by Elmore. Like all auto policies in Illinois, the State Farm policy was meant to cover a designated motor vehicle. The policy was never meant to cover farm equipment such as combines, silage blowers or grain augers. Elmore refuses to acknowledge the fact that different types of policies are meant to insure different types of risks. Just so, a homeowners policy covers the home, but it does not cover a motor vehicle. An auto policy covers a motor vehicle but does not cover an insured's home. Likewise, a farm liability policy will cover farm equipment, such as the auger at issue.

Elmore argues at length about unloading and use of a "hand truck." But the point here is quite clear. While the mechanical device exclusion may allow coverage for a small hand truck, coverage is excluded for farm equipment such as grain augers or silage blowers. Insuring the risk of these devices is not the function an automobile policy was meant to cover.

Elmore claims that Illinois farmers would expect the auto policy to cover the "loading and unloading of grain from the truck." (Appellee's brief, p. 14). But those same farmers would understand that a grain auger is a farm implement, and not a motor vehicle. Those same farmers would understand that a farm implement would be insured under a different type of coverage than an automobile policy. This is especially true given the fact that Illinois insureds, including Illinois farmers, are required to read their policies when they receive them. This Court has held that an insured is expected to know what their policy provides. *Am. Family Mut. Inc. Co. v. Krop*, 2018 IL 122556, ¶2. Under *Krop*, Sheldon Elmore was

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obligated to read his State Farm Auto Policy, including the endorsement that states there is no coverage for injuries arising out of the operation of any farm implement (C. 199).

Under Elmore's illogical approach, because the truck was "unloading grain" at the time of the accident, coverage would be afforded under the State Farm policy even if Kent Elmore was struck by a combine. Elmore's argument suggests that any possible accident while the truck is "unloading" grain would trigger coverage under the State Farm policy. Defendant's position here is not only contrary to the policy language, it is also contrary to customary insurance practices for farming operations. There is a difference between a motor vehicle policy and a farm liability policy. The motor vehicle policy covers motor vehicles used on public roads. It does not cover farm implements. By contrast, a farm liability policy covers farm implements. *See Rockford Mut. Ins. Co. v. Schuppner*, 182 Ill. App. 3d 898 (1st Dist. 1989).

III. The Appellate Court Effectively Redrafts the State Farm Policy.

Elmore claims that the appellate court does not "fundamentally change" the nature of the coverage agreed to by the parties (Appellee's Brief, p. 15). But Sheldon Elmore purchased an *automobile* policy from State Farm, not a farm liability policy. Sheldon Elmore's auto policy covered his truck, not his farm implements. The policy did not cover his combine, his tractors or his grain auger. The appellate court majority disagreed.

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Construing the policy as a whole, including not only the declaration sheet, but also the policy's body and endorsements, it is plain that liability coverage is afforded only to the insured truck, and not to the wide variety of farm equipment Sheldon Elmore utilized in his farming operation. Elmore argues that State Farm is suggesting an "overly broad" definition of "mechanical device." But the reality is that if the entire policy is considered, the mechanical device exclusion is consistent with the fact that only the insured truck is provided liability coverage under the policy.

Kent Elmore's complaint alleges that Sheldon Elmore was negligent because he removed a protective screen on a grain auger. Kent Elmore was injured because he placed his foot into that unprotected farm implement. The appellate court improperly extended liability coverage from the auto policy onto the farm implement. This represents a fundamental change in the nature of the liability coverage in an auto policy.

A. The Unloading of Grain Does Not Remove the Exclusion.

Elmore attempts to argue that the mechanical device exclusion only applies when property is being moved *onto* the insured vehicle (Appellee's Brief, p. 18). According to Elmore, because grain was being unloaded at the time of the accident, the mechanical device exclusion would not apply, because grain was leaving the truck, not being loaded onto the truck. This is an unreasonable interpretation of the exclusion. A court should strive to give meaning to all of the terms of the policy. *State Farm Fire & Cas. Co. v. Martin,* 186 Ill. 2d 367, 376 (1999).

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Under Elmore's interpretation, subparagraph (c) would have no meaning because it would be superfluous to (a). In other words, the mechanical device exclusion (subparagraph c) would only apply for property being loaded *into* the insured truck. But exclusion (a) already applies in that instance. As a result, under this interpretation the mechanical device exclusion has no meaning. Subparagraph (a) already applies to property being loaded into the truck. There would be no reason to have another exclusion for that same process.

B. The Mechanical Device Exclusion Does Not Violate Public Policy.

Kent Elmore's final argument is that the mechanical device exclusion violates public policy because it excludes coverage for damages relating to bodily injuries suffered by a "permissive user of the insured vehicle." According to Elmore, the exclusion here violates the "omnibus clause" in the Motor Vehicle Code. 65 ILCS 5/7-317(b)(2) (Appellee's Brief, p. 20).

But there is no "permissive user" coverage issue in this case. Although Kent Elmore may have operated the insured truck before the accident, Kent is not suing himself. Kent is suing his father, Sheldon. Sheldon was the *named insured* under the State Farm Policy at issue. Kent Elmore is not seeking med pay coverage or UM/UIM coverage for himself. He is seeking *liability* coverage under a policy issued to his father. The coverage issue here is whether liability coverage is afforded to Sheldon Elmore, not Kent Elmore. There is no "discrimination" of a permissive user versus a named insured. The question is whether the mechanical device exclusion applies to foreclose liability coverage to Sheldon, not Kent. There

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is no "omnibus" coverage issue presented here whatsoever. The issue is whether there is liability coverage for Sheldon Elmore, the named insured. The "permissive user" – Kent Elmore – is not being sued by anyone. This is not a case where an exclusion allows coverage for a named insured, but denies coverage to a permissive user. The omnibus section of the Illinois Motor Vehicle Code has nothing to do with this case.

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CONCLUSION

Wherefore, Appellant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, prays that this Court reverse the judgment of the Fifth District, Appellate Court and reinstate the judgment in favor of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, and against defendants in the trial court.

Respectfully submitted,

BY:______/s/ Michael J. Bedesky______
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is nine pages.

BY:______/s/ Michael J. Bedesky_______

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PROOF OF SERVICE

I certify that on May 26, 2020, I electronically filed and transmitted the foregoing Reply Brief of Appellant with the Clerk of the Court for the Illinois Supreme Court using the Odyssey eFileIL system.

I further certify that the other individuals in this case, named below have been served via the Odyssey eFileIL system and via email.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure [735 ILCS 5/1-109], I certify that the statements set forth in this Certificate of Filing and Proof of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

/s/ Debra Nuske

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