FILED
United States Court of Appeals
Tenth Circuit

AUG 17 1989

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED FIRE & CASUALTY COMPANY,

Plaintiff-Appellee,

v.

WILLIAM H. WHITE and MARGARET WHITE, d/b/a GREENSPROUT NURSERY,

Defendants-Appellants,

and

SUSAN C. WINTER; DINA DARLING; TRUDI OSBORNE,

Defendants.

No. 88-2079
(D.C. No. 85-4414)
(D. Kan.)

ORDER AND JUDGMENT*

Before LOGAN, SEYMOUR, and BALDOCK, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Defendants appeal from an order of the district court granting plaintiff's motion for summary judgment. Plaintiff commenced a declaratory judgment action in the district court seeking a determination of whether it was obligated to provide coverage under an insurance policy issued to defendants for the damage to Greensprout Nursery caused by a fire. The fire occurred when fireworks being sold inside the building accidentally ignited. Although the policy did not expressly exclude coverage for sale of fireworks, the policy did exclude coverage for losses occurring due to hazards which were "increased by any means within the control or knowledge of the insured."

The district court declared that plaintiff was not liable for property damage to Greensprout Nursery. Recognizing that the operation of a fireworks stand in a greenhouse is an increased hazard to the property, see Standard Marine Ins. Co. v. Peck, 342 P.2d 661, 662 (Colo. 1959), the district court determined the hazard provision was not ambiguous even though it did not explicitly mention fireworks. The district court concluded the doctrine of waiver and estoppel could not be applied to expand the coverage of the policy. See Hennes Erecting Co. v. National Union Fire Ins. Co., 813 F.2d 1074, 1078 (10th Cir. 1987); Prime Drilling Co. v. Standard Accident Ins. Co., 304 F.2d 221, 224 (10th Cir. 1962); Western Food Prods. Co. v. United States Fire Ins. Co., 699 P.2d 579, 584 (Kan. App. 1985); Ron Henry Ford, Lincoln, Mercury, Inc. v. National Union Fire Ins. Co., 667 P.2d 907, 909 (Kan. App. 1983); Swanston v. Cuna Mut. Ins. Soc'y, 636 P.2d 1368, 1371 (Kan. App. 1981).

After reviewing the briefs, record on appeal, and relevant case law, we conclude the district court correctly granted summary judgment for plaintiff and declared that the policy did not cover property damage caused by the fire. Accordingly, we AFFIRM for substantially the reasons stated by the district court in its memorandum and order filed June 9, 1988.

ENTERED FOR THE COURT
PER CURIAM