Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-142

JOHN MCCLAIN

versus

CLEAR SPRING PROPERTY AND CASUALTY COMPANY ET AL.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 80,483, DIVISION "B"
HONORABLE NGHANA LEWIS, JUDGE PRESIDING

September 09, 2026

TIMOTHY S. MARCEL

JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Timothy S. Marcel

<u>REVERSED AND RENDERED</u>

TSM
SMC
FHW

TRUE COPY

MORGAN NAQUIN
DEPUTY CLERK

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MARCEL, J.

In this case arising from renovation work performed at a residential property, defendant-relator Clear Spring Property and Casualty seeks supervisory review of a February 23, 2026 trial court judgment granting plaintiff John McClain's motion for new trial and consequently denying a previously granted motion for summary judgment filed by Clear Spring. Relator prays that this Court exercise its supervisory jurisdiction to reverse the judgment of the trial court granting the motion for a new trial and to reinstate the previous summary judgment dismissing plaintiff's claims against Clear Spring with prejudice. For the following reasons, we reverse the judgment of the trial court and render judgment in favor of relator.

BACKGROUND

Plaintiff Mr. McClain is the owner of a residential home with the municipal address of 801 St. Andrews Boulevard, LaPlace, Louisiana. On or around August 29, 2021, Hurricane Ida caused significant damage to Mr. McClain's property. Plaintiff contacted Mr. Herman F. Wells, Sr., d/b/a Wells Jr. & Sr. Construction, to perform repairs and renovations to the property. Mr. Wells presented Mr. McClain with copies of his license from the Louisiana Licensing Board for Contractors and a Certificate of Liability Insurance. On October 2, 2022, Mr. McClain and Mr. Wells executed a contract, the "Wells Jr. & Sr. Construction Contract Agreement," which provided a construction period of four weeks commencing on October 4, 2022, with extensions of time for performance of the project to be permitted only with consent of the owner. Construction work at the property proceeded through January 5, 2023, beyond the four-week construction period; Mr. McClain continued to pay Mr. Wells for work up to this date. Mr. Wells' contractor license expired on November 2, 2022. According to Mr. McClain, despite representations from Mr. Wells that he would find workers to finish the renovations, the work was never completed. The instant suit followed, with Mr. McClain naming Mr. Wells, Wells Jr. & Sr. Construction Company, Nova Casualty Company, and Clear Spring Property and Casualty Company as defendants in his petition for damages filed on August 23, 2023. Mr. McClain asserts claims for fraud, breach of contract, breach of warranty, violations of the Louisiana Unfair Trade Practices and Consumer Protection Act ("LUPTA"), and negligence pursuant to Louisiana Civil Code Article 2315. The defendants filed answers denying Mr. McClain's allegations.

On August 16, 2024, Clear Spring filed a motion for summary judgment in which it argued that the policy issued to Mr. Wells, Commercial General Liability Policy No. CB002020900 for the policy period of October 19, 2021 to October 19, 2022, does not provide coverage for the claims asserted by Mr. McClain in his petition for damages. Specifically, Clear Spring argued that plaintiff could not establish his burden of proving that the policy provides coverage for his claims of fraud or LUPTA violations or breach of contract, breach of warranty, or breach of negligence claims. Clear Spring additionally argued that the "property damage" caused by the incomplete work for which Mr. McClain seeks recovery is not covered in the insuring agreement and is also specifically excluded by the "your work exclusion" or the "unlicensed contractors" provisions of the policy.

Mr. McClain and Mr. Wells both filed oppositions to Clear Spring's motion for summary judgment. Mr. McClain argued that the language of the policy's "unlicensed contractor" exclusion is ambiguous and should therefore be construed in favor of coverage. He also argued that the determinations regarding Mr. Wells' faulty workmanship involve matters of fact that preclude summary judgment. Also in opposition to Clear Spring's motion, Mr. Wells argued that there are genuine factual disputes as to: whether Mr. Wells made misrepresentations about his licensing and insurance coverage to induce plaintiff to enter into the construction contract; the nature and extent of the property damage caused by Mr. Wells' allegedly defective work; and whether Mr. Wells' conduct constituted an "occurrence" under the policy. Mr. Wells also argued that the insurance policy does provide coverage because the negligence and breach of contract claims constitute an "occurrence" and also because the exclusions are not applicable.

The hearing on the motion took place on December 6, 2024. At the close of arguments at the hearing, the trial court rendered oral judgment denying the motion on the basis that there was some ambiguity in the policy provisions that precluded granting summary judgment. However, on March 17, 2025 the trial court issued a written judgment granting the motion and dismissing Mr. McClain's claims against Clear Spring with prejudice. In her written reasons accompanying the judgment, the trial court found that the policy provisions excluding coverage were not invalid (citing *Calix v. Ideal Mkt. # 6*, 21-555 (La. App. 5 Cir. 7/13/22), 396 So.3d 458, *writ denied*, 2022-01454 (La. 11/22/22), 350 So.3d 502), and found that Clear Spring had met its burden of proof supporting the granting of summary judgment in its favor. This written ruling was subsequently amended to include appropriate decretal language.

On October 1, 2025, Mr. McClain filed a motion for a new trial in which he argued that the written judgment was clearly contrary to the law and evidence because there remained genuine issues of material fact that remained unresolved, including: (1) the expiration of Mr. Wells' license on November 2, 2022; (2) Mr. Wells' misrepresentations concerning his insurance coverage and licensure; (3) the ambiguous language in Clear Spring's policy that must be construed in favor of coverage; and (4) the extent of damages to Mr. McClain's property. In opposition to the motion, Clear Spring argued that neither the peremptory nor discretionary grounds for a motion for a new trial had been met, and that the motion for a new trial should be denied.

On February 23, 2026, the trial court granted plaintiff's motion for a new trial and issued a new judgment denying Clear Spring's motion for summary judgment. In her written reasons accompanying the judgment, the trial court found that its prior judgment in favor of Clear Spring was clearly contrary to the law and the evidence, and stated that "material facts remain disputed with regards to whether the policy that Clear Spring issued to Mr. Wells, Sr., provides coverage for several of Mr. McClain's claims."

The trial court determined that the term "occurrence" as defined in the policy was "insufficiently unambiguous for the purpose of determining, at this stage of the proceedings, whether the events giving rise to Mr. McClain's causes of action for breach of contract, negligence, and warranty, do not expose Defendant Clear Spring to liability as Defendant Wells, Sr.'s insurer." Specifically, the trial court pointed to the following material facts asserted by Mr. McClain in his petition for damages that remain disputed between the parties and "potentially counsel in favor of finding that coverage applies," which include: (1) Mr. McClain contacted Mr. Wells, Sr. by phone about hiring for repairs and renovations; (2) a copy of Mr. Wells, Sr.'s Certificate of Liability of Insurance was presented to Mr. McClain; and (3) Mr. Wells failed to plan and supervise the contracted work, failed to complete the project according to the agreement, and failed to inform Plaintiff that he would not be able to complete the project according to the agreement. The trial court further stated that the facts of this case were distinguishable from previous rulings of this Court, *Dorsey v. Purvis Contracting Grp., LLC*, 17-369 (La. App. 5 Cir. 12/27/17), 236 So.3d 737, *writ denied*, 2018-0199 (La. 3/23/18), 239 So.3d 296 and *J. Caldarera & Co., Inc. v. Triumph Constr., L.L.C.*, 21-75 (La. App. 5 Cir. 9/22/21), 330 So.3d 364.

Clear Spring's timely application for supervisory review of this judgment followed. In its writ application, Clear Spring argues that the trial court erred as a matter of law when it granted plaintiff's motion for a new trial because the original ruling granting the motion for summary judgment was well-established by the law and evidence, and the district court erred when it failed to correctly apply the standard for granting a new trial under Louisiana Code of Civil Procedure Article 1972.[1]

DISCUSSION

A new trial may be granted in any case if there is good ground therefore, except as otherwise provided by law. La. C.C.P. art. 1973. The granting or denying of a motion for new trial is within the discretion of the trial court. *131 Beverly Knoll, LLC v. Clipper Constr., LLC*, 18-486 (La. App. 5 Cir. 5/15/19), 273 So.3d 1243, 1250. The trial court's determination shall not be disturbed absent an abuse of that discretion. *Id*. This standard of review is highly deferential, but a trial court abuses its discretion if its ruling is based on an erroneous view of the law. *Lepree v. Dorsey*, 22-0853 (La. App. 4 Cir. 8/11/23), 370 So.3d 1191, 1205, *writ denied*, 23-01238 (La. 12/5/23), 373 So.3d 982. To make this determination, we examine whether the trial court legally erred in denying the motion for summary judgment.

A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966. Interpretation of an insurance policy is usually a legal question that can be properly resolved by means of a motion for summary judgment. *J.*

[1] This Court ordered Mr. McClain to file an opposition to the writ application by May 11, 2026, but he failed to do so. In our order setting this matter pursuant to La. C.C.P. art. 966(H), we also allowed both parties additional time for briefing and an opportunity to request oral argument, but neither party did so.

Caldarera, 330 So.3d at 367. A summary judgment may be rendered on the issue of insurance coverage alone, although there is a genuine issue as to liability or damages. *Id*.

An insurance policy is a contract between the parties and should be construed using the general rules for the interpretation of contracts set forth in our Civil Code. *Kazan v. Red Lion Hotels Corp.*, 21-01820, p. 3 (La. 6/29/22), 346 So.3d 267, 270. The interpretation of a contract is the determination of the common intent of the parties. La. C.C. art. 2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046. The words of a contract must be given their generally prevailing meaning. La. C.C. art. 2047. The language of an insurance policy may be general without being ambiguous. *Kazan*, *supra*. Courts lack the authority to alter the terms of an insurance policy under the guise of interpretation and should not create an ambiguity where none exists. *Id*. Whether a contract is clear or ambiguous is a question of law. *Cajun Conti LLC v. Certain Underwriters at Lloyd's, London*, 22-01349, p. 6 (La. 3/17/23), 359 So.3d 922, 927.

It is unclear what the trial court intended by the phrase "insufficiently unambiguous" to describe the term "occurrence" in her written reasons for judgment. A contract term or policy provision is "ambiguous" when there exist two or more reasonable interpretations. *Cadwallader v. Allstate Ins. Co.*, 02-1637, p. 4 (La. 6/27/03), 848 So.2d 577, 580. Ambiguity in an insurance policy must be resolved by construing the policy as a whole. *Louisiana Ins. Guar. Ass'n v. Interstate Fire & Cas. Co.*, 93-911, (La. 1/14/94), 630 So.2d 759, 763 (citing La. C.C. art. 2050). Only when ambiguity remains after applying the general rules of construction is the ambiguous contractual provision to be construed in favor of the insured. *Id*.; La. C.C. art. 2056. With these precepts in mind, we now turn to the facts alleged and the language of the insuring agreement.

In the petition, Mr. McClain alleges that Mr. Wells misrepresented his status as a licensed contractor and the extent of his insurance coverage, and also that Mr. Wells failed to supervise the work, failed to complete the work as agreed in the construction agreement, and failed to inform Mr. McClain that the work would not be completed.

Commercial General Liability Policy No. CB002020900 issued by Clear Spring to Mr. Wells provides the following grant of coverage:

> 1. Insuring Agreement
>
> a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. …
>
> b. This insurance applies to "bodily injury" and "property damage" only if:
>
> c. (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
>
> d. (2) The "bodily injury" or "property damage" occurs during the policy period; …

The contract goes on to provide the following definition of the word "occurrence":

> 13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same harmful conditions.

Under the language of the policy, Mr. McClain's claims will be covered by the insurance policy if he can show that his alleged property damage was caused by an "occurrence" or "accident". Mr. Wells' alleged misrepresentations and omissions are not accidents for the purpose of insurance coverage.

This finding is consistent with this Court's previous holding in *J. Caldarera & Co., Inc. v. Triumph Constr., L.L.C.*, 330 So.3d 364. In that case, also involving a construction dispute, the plaintiff brought claims against the defendant for damages resulting from failure to show up for work, failing to provide notice that they would not complete the work, and abandoning the construction project. These omissions are factually similar to the ones alleged by Mr. McClain. Upon *de novo* review of the commercial general liability policy issued to the defendant, and examining policy language exactly identical to the policy language contained in the policy issued by Clear Spring, we found that the policy did not provide coverage for the claims asserted by the plaintiff. The point there, as it is here, is that the claims asserted arise primarily from the defendant's failure to fulfill the obligations assumed as part of the construction agreement rather than from damage caused by an accident. As we noted previously, a commercial general liability policy is not a performance bond. *Id*.

Having found that the allegations stated in Mr. McClain's petition are not accidents or occurrences for the purposes of triggering coverage under the policy, we pretermit any discussion of whether there may be applicable policy exclusions. We additionally observe that there are no endorsements to the policy that would require examination to determine whether there is coverage.

Having addressed the legal question of whether the policy provides coverage, lastly we turn to whether there remain genuine issues of material fact that preclude granting the motion for summary judgment. A material fact is one that potentially insures or prevents recovery, affects a litigant's ultimate success, or determines the outcome of the lawsuit. *Dillenkofer v. Marrero Day Care Ctr., Inc.*, 16-713, p. 3 (La. App. 5 Cir. 5/24/17), 221 So.3d 279, 282; *Nugent v. On-Call Nursing Agency & Associates of New Orleans, Inc.*, 07-1022, p. 5 (La. App. 5 Cir. 3/25/08), 983 So.2d 128, 132. Whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. *Melerine v. Jefferson Par. Sch. Bd.*, 16-469, p. 4 (La. App. 5 Cir. 2/8/17), 210 So.3d 929, 932. The trial court in her written reasons for judgment pointed to the following disputed fact issues: (1) Mr. McClain contacted Mr. Wells, Sr. by phone about hiring for repairs and renovations; (2) a copy of Mr. Wells, Sr.'s Certificate of Liability of Insurance was presented to Mr. McClain; and (3) Mr. Wells failed to plan and supervise the contracted work, failed to complete the project according to the agreement, and failed to inform Plaintiff that he would not be able to complete the project according to the agreement. The representations made by Mr. Wells, Sr. to Mr. McClain, whether Mr. Wells was licensed to perform the work, and his negligent omissions are all factual questions that are material to the questions of Mr. Wells' liability for Mr. McClains claims for fraud and breach of contract, fraud. However, these factual disputes are not material to the question of whether the insurance policy provides coverage.

We find that the trial court legally erred in granting Mr. McClain's motion for a new trial. Upon *de novo* review, we find that Clear Spring is entitled to summary judgment as a matter of law. Accordingly, we reverse the February 23, 2026 judgment that granted the motion for a new trial. We render judgment in favor of Clear Spring and dismiss with prejudice Mr. McClain's claims against Clear Spring. This matter is remanded to the trial court for further proceedings consistent with our decision herein.

REVERSED AND RENDERED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **SEPTEMBER 9, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-142

E-NOTIFIED

40TH DISTRICT COURT (CLERK)
HONORABLE NGHANA LEWIS (DISTRICT JUDGE)
MATTHEW J. HAMILTON (RELATOR)
H. JAKE RODRIGUEZ (RELATOR)
LAURA CHARPENTIER (RELATOR)
SHERMIN S. KHAN (RESPONDENT)
STEPHEN M. SMITH (RESPONDENT)

MAILED

NO ATTORNEYS WERE MAILED