

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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DANIEL WEADOCK and SHARON WEADOCK,  
as Co-Personal Representatives of the Estate of  
GRACE MARIE WEADOCK, Deceased,

Plaintiffs,

v

File No. 06-25436-NZ  
HON. PHILIP E. RODGERS, JR.

FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant.

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J. Michael Fordney (P13572)  
Attorney for Plaintiffs

Todd W. Millar (P48819)  
Attorney for Defendant

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DECISION AND ORDER GRANTING  
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

There are two issues presented by Defendant's Motion for Summary Disposition:

1. Whether Alese Scott is a named insured under the Farm Bureau homeowners' insurance policy, and
2. Whether the business exclusion applies.<sup>1</sup>

Relevant Factual and Procedural Background

Philip Thomas Richter ("Richter") and Alese Scott ("Scott") were married in 1994 and had children. They were divorced in 1998. Their Consent Judgment of Divorce contained the following Provision in Lieu of Dower:

IT IS FURTHER ORDERED that the Defendant, PHILIP THOMAS RICHTER, shall pay to the Plaintiff, ALESE MICHELLE RICHTER, the sum of One and no/100 Dollar (\$1.00) and this provision made for the Plaintiff shall be in lieu of her dower in the real property of the Defendant and he shall hereafter hold

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<sup>1</sup> Coverage E -Personal Liability and Coverage F - Medical Payments to Others do not apply to: a. bodily injury or property damages arising out of or in connection with a business engaged in by an insured.

and own his real property free, clear and discharged from any such dower rights or comparable claims, and this provision shall be in full satisfaction of all claims that Plaintiff may have in any real property that Defendant now owns or he may hereafter own or in which he now possesses or may hereafter possess any legal or equitable interest.

Also of importance in this case, is the Noninterference provision contained in the Consent Judgment of Divorce which reads as follows:

IT IS FURTHER ORDERED that the Plaintiff, ALESE MICHELLE RICHTER, and the Defendant PHILIP THOMAS RICHTER, shall continue to live apart for the rest of their lives. Each shall be free from interference, direct or indirect, by the other as though unmarried. Neither party shall encourage or actively support another person to molest, threaten, harass or interfere with the other.

On May 30, 2002, Richter and Scott purchased a home on Gauthier Lane as joint tenants with right of survivorship. Together they applied for and obtained homeowners' insurance from Defendant Farm Bureau Insurance Company of Michigan ("Farm Bureau"). They lived together at the Gauthier Lane home, raising their children, and Scott ran a daycare out of the residence. Daniel and Sharon Weadocks' (Weadocks") daughter, Gracie Weadock, was cared for at the daycare.

On July 15, 2005, Gracie Weadock slipped and fell on the wet garage floor at the daycare, hitting her head. She died a few days later as a result of her injuries. In the related case of *Weadock v Scott*, Grand Traverse County Circuit Court Case No. 05-24844-NO, the Weadocks brought an action against Richter and Scott for the death of their daughter. Richter and Scott tendered the defense to Farm Bureau and requested coverage. Farm Bureau refused to defend and denied coverage under the business enterprise exclusion.

On January 30, 2006, the Weadocks filed a Motion for Entry of Order Striking Alese Michelle Scott from the Title of Real Property Located at 5154 Gauthier Lane, Traverse City, Michigan 49684 and Establishing Sole Ownership in Said Property in Philip Thomas Richter Said Order to be Entered Nunc Pro Tunc to the Date of May 1, 2002. Counsel appeared before the Court on March 13, 2006 and represented that all parties were in agreement that, based on the deposition testimony of Scott and Richter, the Court should enter the order nunc pro tunc divesting Scott of any interest which she may have in the property on Gauthier Lane. Without any further discourse, the Court entered the Order.

On May 22, 2006, the Court entered a judgment in the amount of \$600,000 in favor of the Weadocks against Richter only. Richter subsequently assigned any and all causes of action he might have against Farm Bureau to the Weadocks in exchange for the Weadocks promise not to try to collect the judgment against him.

On September 7, 2006, the Weadocks filed this action against Farm Bureau to collect on the judgment. Farm Bureau filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10). The Court heard the oral arguments of counsel on March 5, 2007, requested supplemental briefing and took the matter under advisement. Defendant Farm Bureau filed a supplemental brief.

Farm Bureau contends that Scott was an insured and that the policy's business enterprise exclusion applies so that there is no insurance coverage for the death of the Weadocks' child. In its supplemental brief, Farm Bureau addresses questions raised by this Court at the oral argument regarding the propriety of the Court having entered the Order nunc pro tunc that divested Scott of any interest she might have had in the Gauthier Lane home.

The Weadocks rely on the argument that only Richter was insured, so the business exclusion does not apply. They rely on Richter and Scott's Consent Judgment of Divorce whereby Scott gave up any dower interest she had or might ever have in any property owned by Richter and Richter and Scott agreed to never live together again.

#### Standard of Review

MCR 2.116(C)(10) provides that summary disposition may be entered on behalf of the moving party when it is established that, "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

The applicable standard of review for a motion for summary disposition brought pursuant to MCR 2.116(C)(10) was set forth in *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999) as follows:

This Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits,

pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J. Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

#### Analysis

The Weadocks take the position that Farm Bureau is liable on the judgment because Scott, by definition, is not an "Insured" under the policy. Alternatively, by their Consent Judgment of Divorce, Scott and Richter contracted not to live together or own property together. Consequently, their purchase of the Gauthier Lane home was in violation of the Consent Judgment of Divorce and was properly set aside by the Court. As a result, Scott did not have an insurable interest in the Gauthier Lane home. Since Scott was not an owner of the property and not an "Insured," the business exclusion does not apply and the policy provides coverage.

There is so much wrong with the Plaintiffs' arguments on so many levels that the Court is hard-pressed to know where to begin.

1.  
"Insured"

The subject insurance policy was applied for and issued to two named insureds - Alese Scott and Philip Richter at the Gauthier Lane address. The policy defines "Insured" as "you and residents of your household who are: a. your relatives; or b. under the age of 18 living on the residence premises continuously for longer than 30 days at the time of loss."

The Weadocks claim that Scott was not an insured because she was neither a. a relative of Richter nor b. under the age of 18. This argument conveniently ignores the first part of the definition of an "Insured" - "you." "You" refers to the insureds named in the policy who were Richter *and* Scott. Subsections a. and b. of the definition define people who are covered in addition to the named insureds. Therefore, Scott was an "Insured."<sup>2</sup>

2.  
Consent Judgment of Divorce and  
Motion to Strike Scott from Title

a.  
Provision in Lieu of Dower

The Provision in Lieu of Dower contained in the Consent Judgment of Divorce does not support the Plaintiffs' argument. First, dower rights only arise in the context of a marriage. At common law, dower is "the right of a wife, upon her husband's death, to a life estate in one-third of the land that he owned in fee. *Black's Law Dictionary*, 7<sup>th</sup> Ed. While Scott gave up her dower interest in any land owned by Richter in fee as a part of the divorce, she was not Richter's wife when they bought the Gauthier Lane property and he did not own the Gathier Lane property in fee. Richter and Scott bought the Gauthier Lane property, four years after their divorce, as joint tenants with right of survivorship. Each signed the mortgage documents. Therefore, there was no dower right in the Gauthier Lane property for Scott to surrender. Further, as joint tenants, Richter and Scott each had an undivided one-half interest in the property. Scott had no interest in Richter's one-half undivided interest. She only had an ownership interest in her undivided one-half interest.

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<sup>2</sup> The Court does not need to address, and expresses no opinion on, the issue of whether Scott had an insurable interest in her own liability even if she had no ownership interest in the property.

b.

Noninterference Provision

The Weadocks next argue that Scott and Richter violated the Noninterference provision of the Consent Judgment of Divorce by buying the Gauthier Lane property and living together. The Plaintiffs advocate for a reading of the Noninterference provision that precludes the parties from ever living together or owning property together.

An objective reading of the Noninterference provision shows that it clearly does not apply to property ownership. It is merely a mutual promise by the parties that they will not negatively interfere in each other's lives. Joint ownership of property, without more, is not negative interference. Likewise, living together, without more, is not negative interference.

There are no allegations of abuse or other harmful conduct by either Richter or Scott. Therefore, it would be against the public policy of this state for the Court to preclude these two adults from living together and raising their children together in a nuclear family setting. Any interpretation of the Noninterference provision that would require these people to live apart for the rest of their lives, regardless of the circumstances, is unwarranted and unenforceable.

c.

Order Nunc Pro Tunc

Frankly, this Court is embarrassed that it signed the Order nunc pro tunc striking Scott's name from the title to the Gauthier Lane property. There was no legally justifiable reason for doing this. When the Court was presented with the motion to strike Scott from the title to the Gauthier Lane property, the Court was led to believe that it was clearing up title to the marital home.<sup>3</sup> Instead, the Court divested Scott of her one-half interest in the Gauthier Lane home solely for the purpose of facilitating a later claim by these Plaintiffs to the proceeds of the Farm Bureau insurance policy.

Conclusion

The Court is not sure whether Plaintiffs' counsel is confused or intentionally perpetrating a fraud upon this Court, but this travesty ends here. For the reasons stated herein, the Order nunc pro tunc entered by this Court on March 13, 2006 in Case No. 05-24844-NO

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<sup>3</sup> Certainly, the motion to divest Scott of title should have been brought in the divorce case if it dealt with a marital asset. The Gauthier Lane property, however, was not a marital asset and a subsequent order in the divorce case cannot make it so.

should be and hereby is rescinded. Plaintiffs' counsel shall prepare an Order, in recordable form, for entry by this Court that will reinstate Ms. Scott's interest in the Gauthier Lane property.<sup>4</sup>

Scott was insured by Farm Bureau. Scott ran a daycare business at the Gauthier Lane address. Sadly, Richter and Scott did not purchase daycare coverage so the business enterprise exclusion applies. There is no insurance coverage for the death of the Weadocks' daughter.

The Defendant's Motion for Summary Disposition is granted. This case is dismissed with prejudice.

IT IS SO ORDERED.



HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

Dated: \_\_\_\_\_

3/19/04

<sup>4</sup> A copy of this Order shall also be filed in Grand Traverse County Circuit Court Case No. 05-24844-NO.