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IN THE
COURT OF APPEALS OF INDIANA

BARBARA WRIGHT,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 03A01-0903-CV-109
	)	
WESTFIELD NATIONAL	)	
INSURANCE COMPANY,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0806-CC-1240

July 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Barbara Wright appeals the trial court's grant of summary judgment in favor of Westfield National Insurance Company ("Westfield"). We affirm.

Issues

The issues before us are:

I. whether the trial court properly allowed Westfield to supplement its designation of evidence; and

II. whether the trial court properly concluded that Westfield was entitled to judgment as a matter of law.

Facts

Between 1999 and 2004, Wright lived at 803 Central Place in Columbus, while her husband Donald lived at 911 Chestnut Street, also in Columbus. After Donald died in 2004, Wright moved into the Chestnut Street house and has lived there ever since. She kept the Central Place house, divided it, and rented it out as two units. However, on October 12, 2005, the City of Columbus condemned one-half of the Central Place house, and Wright could no longer rent out that half.

Effective December 18, 2005, Wright purchased a homeowner's insurance policy from Westfield through an insurance agency, Miller Hawes Phelan Insurance Group ("Miller").[1] Both Wright and Donald were named insureds, and the Central Place house was listed as the "residence premises" for the policy. The policy defined "residence premises" as a structure or building "where you reside . . . ." App. p. 52.

[1] This apparently was a renewal of a previous policy.

On January 18, 2006, Wright informed Miller that Donald was deceased and asked that he be removed as a named insured. Wright also asked Miller to change the mailing address for the policy to 911 Chestnut Street. After receiving this request, a Miller employee told Wright that if she was renting out the Central Place house, the policy would have to be rewritten. Wright told the Miller employee that she "[w]as not sure if she would move there or not . . . ." App. p. 278.

The last tenant at one-half of the Central Place house, Wright's daughter, moved out in June 2006, leaving the house unoccupied. On July 11, 2006, there was a fire at the Central Place house. After Wright informed Westfield of the fire, it determined that the fire was incendiary in origin.

On July 11, 2007, Wright filed a complaint for declaratory judgment seeking coverage for the fire under the Westfield policy. On December 7, 2007, Westfield moved for summary judgment on the bases that the Central Place house was not a "residence premises" under the policy, and that Wright had not cooperated with Westfield's investigation into the fire. On April 1, 2008, after Wright filed her designation of evidence in opposition to Westfield's summary judgment motion, Westfield filed a reply summary judgment brief that included an additional designation of evidence. On October 3, 2008, the trial court granted summary judgment in Westfield's favor. Wright now appeals.

Analysis

I. Additional Designation of Evidence

Wright's first complaint is that the trial court erred in permitting Westfield to designate additional evidence after its initial designation with the filing of the summary judgment motion. This additional designation consisted of an affidavit from a Miller claims representative, along with an accompanying exhibit consisting of two emails, stating that Wright had been informed that if she was no longer living in the Central Place house, her homeowner's policy with Westfield would have to be rewritten. Wright moved to strike this supplemental designation of evidence, which the trial court denied.

Indiana Trial Rule 56(D) states in part, "At the time of filing the motion [for summary judgment] . . . , a party shall designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion." Trial Rule 56(E), however, permits timely-designated evidence to be supplemented by additional materials at a later time. See Indiana Univ. Med. Ctr., Riley Hosp. for Children v. Logan, 728 N.E.2d 855, 858 (Ind. 2000); Spudich v. Northern Indiana Pub. Serv. Co., 745 N.E.2d 281, 287 (Ind. Ct. App. 2001), trans. denied; Pekin Ins. Co. v. Charlie Rowe Chevrolet, Inc., 556 N.E.2d 1367, 1369 (Ind. Ct. App. 1990). It is within the trial court's discretion whether to accept a supplemental affidavit filed later than the original date for filing specified in Trial Rule 56. See Logan, 728 N.E.2d at 858.

Wright fails to acknowledge the substantial authority that permits the filing of supplemental affidavits in the summary judgment context. In fact, she has failed to cite any authority in support of her argument aside from a general reference to Trial Rule 56(C). She has made no argument that the trial court abused its discretion in permitting Westfield to file the supplemental affidavit. Wright also makes an allegation that the supplemental designation contained hearsay and was not properly authenticated, but cites no authority for these claims. Wright's complete failure to cite any pertinent authority or engage in any legal analysis in support of her claims waives appellate review of them. See Ind. Appellate Rule 46(A)(8)(a) (requiring argument section of brief to contain contentions of appellant on the issues presented, supported by cogent reasoning, and that each contention be supported by citations to authorities, statutes, and appendix or parts of the record on appeal relied on); Triplett v. USX Corp., 893 N.E.2d 1107, 1117 (Ind. Ct. App. 2008), trans. denied. We affirm the trial court's denial of Wright's motion to strike.

II. Grant of Summary Judgment

We apply the same standard as the trial court when reviewing a summary judgment ruling. Kopczynski v. Barger, 887 N.E.2d 928, 930 (Ind. 2008). We will affirm summary judgment unless there is a genuine issue as to a material fact or the moving party is not entitled to a judgment as a matter of law. Id. "All facts and reasonable inferences from them are to be construed in favor of the nonmoving party." Id. We may affirm a grant of summary judgment upon any theory supported by the evidence. Keaton & Keaton v. Keaton, 842 N.E.2d 816, 821 (Ind. 2006).

Westfield moved for summary judgment on two bases: that Wright failed to cooperate in the investigation of the fire, and that the Central Place house was not a covered "residence premises" under the policy. We find it necessary only to address the second basis. The Westfield policy stated that it covered "the dwelling on the **residence premises** show in the Declarations . . . ." App. p. 52. The policy defined "residence premises" as "the one family dwelling, other structures, and grounds; or . . . that part of any other building . . . where you reside and which is shown as the '**residence premises**' in the Declarations." Id. (underlined emphasis added).

Under this language, in order to be covered, an insured must have resided in the property; it is not enough that the property was listed in the declarations. Both the fact of residency and listing in the declarations must exist in order for there to be coverage. Thus, simply because the Central Place house was listed in the declarations, even after Wright advised Miller of her change of address, this was not enough to make the house an insured "residence premises," due to the fact that Wright was not living there. At the time of the fire, Wright had not lived in the Central Place house for some time and it was not a "residence premises." Wright has not favored us with any case law or legal analysis regarding interpretation of insurance policies, such as to persuade us that we ought to read the insurance policy differently. She has waived any argument regarding insurance policy interpretation. See Ind. App. R. 46(A)(8)(a); Triplett, 893 N.E.2d at 1117.

Wright also contends that Westfield was required to provide coverage for the Central Place house, evidently because it did not immediately cancel the policy when it

learned, through Miller, of Wright's change of mailing address to Chestnut Street. However, there is evidence that a Miller employee told Wright that the policy would have to be rewritten if she was no longer living at the Central Place house; nothing in any of Wright's designated evidence contradicts this. Although Wright submitted evidence that she informed Miller of a change in mailing address, this does not automatically equal a change of residence; indeed, the evidence designated by Westfield was that Wright was less than clear with Miller whether she in fact had completely moved out of the Central Place house.

Wright also contends in her brief that she had informed Miller "that she was renting the apartments and that she had moved some two years prior to the fire." Appellant's Br. p. 14. Our review of that part of the record Wright has cited does not support this assertion. What she evidently had told Miller at some point was that her grandson's ex-wife had moved into part of the Central Place home <u>while Wright was still living there</u>, and that Wright was receiving HUD rent payments through that arrangement.[2] In other words, under this arrangement and the language of the policy, the Central Place house would still be considered Wright's "residence premises" because Wright still lived in part of the building.

In any event, to the extent Wright may be hinting at an estoppel-type argument, i.e. that Westfield could not deny coverage because it allegedly knew she had moved out of the Central Place house, once again she cites no authority in support of any such

[2] Wright also testified that this woman moved out of the Central Place home before Wright did.

claim.[3] Whether an insurance company may be estopped from denying coverage to an insured is a very intricate legal issue, and one that may only be invoked in limited circumstances. See Transcontinental Ins. Co. v. J.L. Manta, Inc., 714 N.E.2d 1277, 1280-81 (Ind. Ct. App. 1999). Rather, an insured generally has a duty to read and become familiar with the contents of an insurance policy. National Mut. Ins. Co. v. Curtis, 867 N.E.2d 631, 635 (Ind. Ct. App. 2007). We simply will not undertake to develop an estoppel argument on Wright's behalf; such argument is waived. See Ind. App. R. 46(A)(8)(a); Triplett, 893 N.E.2d at 1117. Wright has not persuaded us that the trial court erred in granting summary judgment to Westfield.

Conclusion

We affirm the trial court's denial of Wright's motion to strike Westfield's supplemental designation of evidence and its granting of Westfield's motion for summary judgment.

Affirmed.

BAKER, C.J., and MAY, J., concur.

[3] In fact, the only case cited in Wright's brief concerns the general summary judgment standard of review.