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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

IDS PROPERTY CASUALTY INSURANCE
COMPANY,

Plaintiff and Respondent,

v.

PATRICIA GRADEK et al.,

Defendants and Appellants.

F065169

(Kern Super. Ct. No. 273418)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Sidney P. Chapin, Judge.

Chain Cohn Stiles and David K. Cohn for Defendants and Appellants.

Woolls & Peer and H. Douglas Galt for Plaintiff and Respondent.

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INTRODUCTION

After Ramon Rebeles parked on a frontage road, four dogs bolted out of his vehicle. Defendant Patricia Gradek was seriously injured when her bicycle collided with one of the dogs on a nearby bicycle path. The Rebeles's insurance carrier, plaintiff IDS Property Casualty Insurance Company (plaintiff), filed a declaratory relief action alleging that the incident did not trigger insurance coverage because it did not result from a "use"

of the Rebeles's motor vehicle. (See Ins. Code, § 11580.06,¹ subd.(g).) Defendants claimed that the incident arose out of the unintentional unloading of the dogs, which constitutes a use of the motor vehicle under section 11580.06, subdivision (g).

After a court trial, the superior court found that the dogs "had completed the process of unloading" from the Rebeles vehicle when the incident occurred. The court concluded that Gradek's injury did not result from a "use" of the motor vehicle, and entered judgment in favor of plaintiff. We affirm.

BACKGROUND

On the morning of September 6, 2009, Patricia and Dale Gradek (defendants) were riding bicycles on a path, when Mrs. Gradek's bicycle collided with a dog. She sustained serious injuries.

Shortly beforehand, Ramon and Connie Rebeles (the Rebeleses) had driven their Toyota RAV IV (Toyota) to Alfred Harrell Highway Frontage Road. Their four dogs accompanied them in the Toyota. The Rebeleses intended to have their dogs run free from the frontage road to a nearby river.

Mrs. Rebeles's brother-in-law drove in a separate vehicle behind the Toyota. After arriving, the brother-in-law exited his vehicle and walked towards the Toyota. Mr. Rebeles thought the brother-in-law was going to open the rear gate of the Toyota. This concerned Mr. Rebeles, because he believed that the dogs would bolt out of the back door if it was opened. To prevent that from occurring, Mr. Rebeles opened his door and exited the vehicle while the engine was running. As he opened his door, the dogs jumped out of the Toyota and began running. They ran through or around a chainlink fence between the frontage road and the bike path. The bike path was approximately 20 feet from the Toyota. Within seconds of the dogs exiting the Toyota, the Rebeleses heard a scream and yelling. They then observed Mrs. Gradek on the ground.

¹ All further statutory references are to the Insurance Code unless otherwise stated.

Defendants sued the Rebeleses, alleging that they owned the dog that collided with Mrs. Gradek's bicycle and were liable for her injuries. The Rebeleses were insured under an automobile insurance policy issued by plaintiff (the policy). The policy obligates plaintiff to "pay damages for which an insured person is legally liable because of bodily injury or property damage resulting from the ownership, maintenance or use of a car...."

Plaintiff initiated an action for declaratory relief, contending that it had "no liability for the damages sought by the Gradeks" because "the claimed injuries did not result from the Rebeleses' 'ownership, maintenance or use of a car...'"

At a court trial, defendants contended that coverage was triggered because the incident arose out of the unloading of the dogs from the motor vehicle. Plaintiff countered that there was an insufficient causal connection between the accident and a "use" of the vehicle.

After trial concluded, the superior court found as follows:

"The Toyota did not play an active role in causing Mrs. Gradek's injury. The Toyota merely served as the means by which the instrument that allegedly caused the injury (the Rebeleses' dog) and the alleged tortfeasors (the Rebeleses) were transported to the scene. [¶] The Gradeks have argued that the accident arose out of the unloading of the Toyota. However, the accident occurred well beyond the unloading zone. [Citation]. The dogs were at the intended destination and had completed the process of unloading from the Toyota. They were on the ground and running. The accident occurred (allegedly) because the dogs were now running unrestrained."

Judgment was entered in favor of plaintiff, and defendants appeal.

ANALYSIS

I.

STANDARD OF REVIEW

Both parties agree that our standard of review is de novo. They are only partly correct. To the extent we are required to interpret the policy itself, we do so de novo. (*National Cas. Co. v. Sovereign General Ins. Services, Inc.* (2006) 137 Cal.App.4th 812,

818.) The trial court’s factual findings, however, are reviewed for substantial evidence. (*St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mut. Ins. Co.* (2012) 210 Cal.App.4th 645, 654; *Axis Surplus Ins. Co. v. Glencoe Ins. Ltd.* (2012) 204 Cal.App.4th 1214, 1222 (*Axis Surplus Ins. Co.*.)

Though the parties contend otherwise, there is a dispute of fact on appeal. Defendants argue that the “real question” presented on appeal “is whether the Rebeles[es] had completed the unloading process when the incident causing injury to Patricia Gradek occurred.” This question is one of fact. (See *Amer. Auto. Ins. Co. v. Amer. Fid. & Cas. Co.* (1951) 106 Cal.App.2d 630, 636-637 (*American Auto.*.) And, the parties offer conflicting answers. Plaintiff contends the unloading process was completed before the dog allegedly injured Gradek. Defendants contend that the unloading process was not completed (or even begun) when the dog allegedly injured Gradek.

The trial court answered this question of fact, expressly finding that, “the accident occurred well beyond the unloading zone. [Citation.] The dogs were at the intended destination and had completed the process of unloading from the Toyota.” We defer to this factual finding and review it only to ensure that it is supported by substantial evidence. (*Axis Surplus Ins. Co.*, *supra*, 204 Cal.App.4th at p. 1222.)

II.

THE TRIAL COURT’S RELEVANT FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE

The trial court’s finding that the dogs had “completed the process of unloading” when the accident occurred is supported by substantial evidence. Connie Rebeles testified that Gradek was on the ground in the bike path 20 feet (or maybe 30 feet) away from the Rebeleses’ vehicle. The trial court also found that the Rebeleses intended to have the dogs run from the frontage road to the river.²

² Defendants do not challenge this finding on appeal.

That the collision between Gradek and the Rebeleses' dog occurred on a bike path 20 feet (or more) away from the vehicle was evidence that the dog had completed unloading from the vehicle. (See *State Farm Mut. Auto Ins. Co. v. Grisham* (2004) 122 Cal.App.4th 563, 568 (*Grisham*) [tort occurring "20 to 25 yards" away from vehicle was "well beyond any unloading zone or activity"].) That the Rebeleses intended to have their dogs run from the frontage road supports the finding that unloading concluded once they exited the vehicle. (See *id.* at p. 567.) Because the trial court's finding that the dog had completed unloading from the vehicle is supported by substantial evidence, we accept it as true on appeal.

III.

THE FACTS AS FOUND BY THE TRIAL COURT DO NOT TRIGGER COVERAGE UNDER THE POLICY

In order for an injury to arise out of the use of a vehicle, one or more of the following must be a predominate cause of the injury: (1) operation; (2) movement; (3) maintenance; (4) loading; or (5) unloading of the vehicle. (§ 11580.06, subd. (g); *Grisham, supra*, 122 Cal.App.4th at p. 567.) Defendants do not contend that the injury here resulted from the movement, maintenance or loading of the vehicle. Thus, we are left to determine whether the (1) operation or (2) unloading of the vehicle was a predominate cause.

In this vein, defendants present two arguments: (1) the transportation of the dogs constituted a use of the vehicle; and (2) the unintentional unloading of the dogs constituted a use of the vehicle, and Mrs. Gradek's injuries arose out of that use. The first contention is correct, but not dispositive. The transportation of the dogs, though a use of the vehicle, was not sufficiently causally related to the incident. The second contention has no merit.

A. THE “USE” OF THE MOTOR VEHICLE TO TRANSPORT THE DOGS TO A PLACE NEAR THE SITUS OF INJURY DOES NOT ESTABLISH THE REQUISITE LEVEL OF CAUSATION TO TRIGGER COVERAGE

Defendants first argue that the transportation of the dogs was a “use” of the motor vehicle. We agree. (See *Hartford Accident & Indemnity Co. v. Civil Service Employees Ins. Co.* (1973) 33 Cal.App.3d 26, 32.) But defendants end their transportation-as-use argument there. The next analytical step – whether the bodily injury at issue resulted from that particular use – is left unaddressed.

There is only a single causal link between the use of the vehicle to transport the dogs and the injury: it’s how the dogs arrived at the site of the injury. It is well-settled that this type of causal relationship is insufficient to trigger coverage. (Cf. *Grisham*, *supra*, 122 Cal.App.4th at pp. 567-568.) “ ‘ [T]he mere transportation of a tortfeasor to a site where he commits a tort after departure from the ... vehicle’ does not establish the requisite causal relationship” ’ between the use of the vehicle and the injury.” (*Ibid.*) A contrary rule would, if “[c]arried to its logical conclusion[,] ... attach automobile insurance coverage to every accident which occurred after an insured had first been transported by automobile.” (*Aetna Cas. & Surety Co. v. Safeco Ins. Co.* (1980) 103 Cal.App.3d 694, 700.)³

B. GRADEK’S INJURY DID NOT RESULT FROM THE UNLOADING OF THE DOGS

Defendants next argue that the injury was caused by the “unintentional unloading” of the dog from the vehicle. There is no general rule of law as to when an accident arises out of the “unloading” of a vehicle. (*American Auto*, *supra*, 106 Cal.App.2d at p. 636.) Rather, a case-specific factual evaluation must be performed. (*Id.* at p. 637.) Here, that

³ The quoted cases pertain to the transportation of the tortfeasor. We see no reason to distinguish the relevance of the propositions cited on the basis that the dogs here were not tortfeasors but rather mechanisms of injury.

factual evaluation was done by the trial court. The trial court found that the dogs “had completed the process of unloading” from the vehicle when the incident occurred. It further found that the injury did not result from a use of the Rebeles vehicle. Substantial evidence supported these dispositive findings. (See issue II, *ante*.)

Cases cited by defendants do not alter this conclusion. Defendants rely primarily on three cases: *American Auto*, *supra*, 106 Cal.App.2d 630, *Maryland Cas. Co. v. Tighe* (9th Cir. 1940) 115 F.2d 297 (*Tighe*), and *National Indemnity Co. v. Farmers Home Mutual Ins. Co.* (1979) 95 Cal.App.3d 102 (*National Indemnity*). None of these cases control here.

American Auto

In *American Auto*, *supra*, 106 Cal.App.2d 630, the Second District considered whether an oil spill arose out of the unloading of a tank truck and trailer carrying diesel oil. Ultimately, the court held that, “the accident falls within the coverage of the ‘loading and unloading’ provision of defendant’s policy since the accident occurred while unloading was in progress and before the oil had come to ... its ultimate destination.” (*Id.* at p. 638.)

Here, the trial court found the accident did not occur while “unloading was in progress.” The trial court further found that the incident did not occur before the dogs had come to their intended destination. Thus, neither of the two rationales in *American Auto*’s holding apply here.⁴

⁴ Moreover, *American Auto* and *Tighe* were decided before *State Farm Mut. Auto. Ins. Co. v. Partridge* (1973) 10 Cal.3d 94. Such cases are of questionable precedential value regarding causal analysis in this context. (See *Grisham*, *supra*, 122 Cal.App.4th at p. 569.) Similarly, defendants rely on *Hartford Accident & Indem. Co. v. Civil Service Employees Ins. Co.*, *supra*, 33 Cal.App.3d 26, which is no longer controlling or even persuasive authority. (See *American Nat. Property & Casualty. Co. v. Julie R.* (1999) 76 Cal.App.4th 134, 144.)

Tighe

In *Tighe, supra*, 115 F.2d 297, the Ninth Circuit Court of Appeals considered whether an accident arose out of the unloading of a motor vehicle. Appellee Leong Cheung made a delivery of vegetables to a restaurant, and was walking on the sidewalk when he collided with Tighe. The trial court found that Leong Cheung was returning to his truck “for the purpose of obtaining further vegetables to deliver” when he collided with Tighe. The trial court found that “at the time of the alleged accident[, appellee] was unloading the truck ...” and that coverage was triggered. The Ninth Circuit affirmed. (*Id.* at p. 298.)

Unlike the trial court in *Tighe*, the finder-of-fact in the present case determined that the dogs had “completed the process of unloading” when the accident occurred. In *Tighe*, the “unloader” (who was also the mechanism of injury) was engaged in an integral part of the unloading process when the accident occurred. Cheung was returning to his truck to unload more vegetables. Here, there is no analogous fact suggesting that the process of unloading the dogs was ongoing when the accident occurred.

National Indemnity

In *National Indemnity, supra*, 95 Cal.App.3d 102, the Second District considered whether a tragic vehicle versus pedestrian accident arose out of a use of a motor vehicle. Lucia Quibael was driving her daughter, Iriss, and her nephew, Conrad Cortes, to the Cortes residence. Lucia parked her vehicle, and Iriss opened the passenger side door. Conrad exited the vehicle on the passenger’s side and crossed the street in front of Lucia’s vehicle. Conrad was half way across the street when he was struck by a vehicle.

The Court of Appeal found that the incident did arise from a “use” of Lucia’s motor vehicle. The *National Indemnity* court reasoned that the “process of unloading a child from a motor vehicle does not end the moment that the child’s feet touch the ground

or when his or her body is entirely outside the vehicle.” (*National Indemnity, supra*, 95 Cal.App.3d at p. 106.) *National Indemnity* is distinguishable.⁵

First, the trial court’s decision here was not based solely on the fact that the dogs were entirely outside the vehicle with their paws on the ground. The trial court also found that (1) the accident occurred well beyond the unloading zone (cf. *Grisham, supra*, 122 Cal.App.4th at p. 568), (2) the dogs were at their intended destination, (3) the dogs were on the ground and running unrestrained, and (4) the unloading process had completed before the accident occurred. Thus, the finding here is predicated on more than the bases *National Indemnity* deemed insufficient by themselves.

Second, the intended destination of the “unloader” (i.e., the child) in *National Indemnity* was “apparently” his home. (*National Indemnity, supra*, 95 Cal.App.3d at p. 105.) He had not yet arrived at that intended destination when the accident occurred. (*Ibid.*) Thus, the child’s exit from the vehicle and placement of his feet on the ground did not conclude the unloading process. Conversely, the intended destination for the Rebeleses’s dogs was the frontage road where the Toyota was parked. The Rebeleses’ intention was that the dogs would run free, beginning from the frontage road. Thus, the dogs’ exit from the vehicle itself resulted in arrival at the intended destination.

Moreover, *National Indemnity* provides no general rule for determining when a particular unloading process has ended, and for good reason. The essential inquiry at issue in *National Indemnity*, and the present case, is factual and thus resistant to rules of broad applicability. The unloading process for food deliveries, *Tighe, supra*, 115 F.2d at

⁵ *National Indemnity*’s “holdings” have little relevance outside the confines of that case’s specific facts. *National Indemnity*’s only discernable holding on this issue is set out in negative terms: “The process of unloading a child from a motor vehicle does not end the moment that the child’s feet touch the ground or when his or her body is entirely outside the vehicle.” It provides no analytical framework for positively determining whether an unloading process has completed in any particular case with different facts.

pages 297-298, is different from the unloading process for diesel, *American Auto, supra*, 106 Cal.App.2d at pages 631-633, which is different from the unloading process for dogs, *Grisham, supra*, 122 Cal.App.4th at page 565. There is no universal endpoint to these varying unloading processes (or their ensuing effects). Rather, whether an accident arises out of the unloading a vehicle is determined on a case-by-case basis. (*American Auto, supra*, 106 Cal.App.2d at pp. 636-637.) “Necessarily, no general rule can be laid down as to when an accident arises out of the ‘unloading’ of a vehicle, but each case must be separately considered according to the particular facts involved.” (*Ibid.*, fn. omitted.) It is the type of inquiry left to finders-of-fact, and is ill-suited to bright-line rules and second-guessing from appellate courts. Here, the task of conducting that fact-intensive consideration fell to the trial court, which concluded that the accident did not arise from the unloading of the Rebeleses’ vehicle.

None of the cases cited by defendants compel reversal of that conclusion.

DISPOSITION

The judgment is affirmed.

Poochigian, J.

WE CONCUR:

Cornell, Acting P.J.

Gomes, J.