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PREVIEW; Kaul v. State Farm: “From the roof tear to the wall, when a policy can’t cover it all” Does the Doctrine of Efficient Proximate Cause Precede Insurance Policy Language in Montana?

Hannah Willstein*

Oral Argument is scheduled for Wednesday, January 6, 2021, at 9:30 a.m., and will be conducted telephonically. Lincoln Palmer and Rexford L. Palmer will likely appear for the Appellants, Gary and Carolyn Kaul, and Bradley Luck and Katelyn Hepburn will likely appear for the Appellee, State Farm. The Appellants have allotted five minutes of their time for Amicus Curiae arguments from the Montana Trial Lawyers Association, on behalf of whom Domenic Cossi will likely appear.

I. INTRODUCTION

This case presents questions about insurance coverage in Montana. The Court will decide whether Montana’s “efficient proximate cause doctrine” mandates coverage for water damage to a recreational vehicle’s (“RV”) wall, and whether the wall repair is covered as a mitigation expense, assuming the repair was necessary to protect the RV from additional damage.

II. FACTUAL AND PROCEDURAL BACKGROUND

Gary and Carolyn Kaul were driving their RV in March 2017, when the vehicle’s roof membrane was torn by a tree.¹ Later, while the RV was in storage in Missoula, rain got in through the tear, damaging the RV’s wall.² The Kauls noticed this damage in May and June.³ State Farm paid for the roof’s repair, but denied coverage for the wall repair and the related expenses.⁴ The Kauls sued to obtain coverage, alleging State Farm should have covered all the expenses and repair costs along with the roof repair.⁵

The Kauls moved for summary judgment on the issue of coverage of the wall damage to their RV and the expenses they incurred to protect the RV from further damage.⁶ State Farm cross-moved for summary judgment, alleging the clear and unambiguous language of the State Farm Recreational Vehicle Policy (“Policy”) precludes coverage for the wall

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¹ Brief for Appellant at 2, *Kaul v. State Farm*, <https://perma.cc/M32P-LZAG> (Mont. May 16, 2020) (No. DA 20-0052) [hereinafter Brief for Appellant].

² *Id.*

³ *Id.*

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.* at 9.

damage.⁷ State Farm prevailed on summary judgment as to the wall damage,⁸ but the Kauls prevailed as to their expenses.⁹

The district court concluded the Policy’s definition of loss as “direct, sudden, and accidental damage” is unambiguous; the damage must be all three, not just “direct.”¹⁰ Thus, the court found the proximate cause analysis was not proper, because this doctrine does not account for the Policy’s language.¹¹ The court found there was no genuine issue of material fact regarding water damage to the RV wall¹² and concluded the water damage to the wall was not a covered loss under the policy, because it did not result from sudden damage. Thus, partial summary judgment was granted in favor of State Farm.¹³ The district court found State Farm must pay any reasonable expenses incurred to protect the RV from additional damage.¹⁴ Excluding the expenses arising directly from the repair to the RV wall, this award was calculated to be \$3,177.00.¹⁵

III. SUMMARY OF ARGUMENTS

A. Appellant Kaul’s Argument

Appellant’s arguments on appeal are: (1) Montana’s “efficient proximate cause doctrine” mandates coverage of the water damage to the RV wall; (2) 34 minutes of water entry into the RV wall constitutes “sudden damage” because the RV required repair; and (3) the wall repair is covered as a mitigation expense because expert testimony states it was necessary to protect the RV from additional damage.¹⁶ Appellant states how *Green v. Milwaukee Mechanics’ Ins. Co.*¹⁷ introduced the doctrine of efficient proximate cause, thus mandating coverage of subsequent loss proximately caused by a covered loss.¹⁸ This doctrine is sometimes applied when the subsequent loss is not covered.¹⁹

Appellants explain Appellee conceded coverage of the roof tear, and how the roof tear proximately caused the wall damage.²⁰ They argue Montana’s efficient proximate cause doctrine mandates coverage of the

⁷ Brief for Appellee at 8, *Kaul v. State Farm*, <https://perma.cc/K6DE-NW7D> (Mont. Aug. 5, 2020) (No. DA 20-0052) [hereinafter Brief for Appellee].

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 10.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 15.

¹⁴ *Id.* at 22.

¹⁵ *Id.*

¹⁶ Brief for Appellant, *supra* note 1, at 6–7.

¹⁷ 252 P. 310 (1926).

¹⁸ Brief for Appellant, *supra* note 1, at 11 (citing *Green*, 252 P. at 314).

¹⁹ *Id.*

²⁰ *Id.* at 13.

wall repair because the roof tear proximately caused the wall damage.²¹ Appellant also maintains that if a court applies a reasonable interpretation of “damage” as “loss of value” or “need to repair” to the Policy, the water entering the RV was sudden damage and thus should be covered.²²

Appellant contends the Policy requires the insureds to protect the RV from additional damage, and in turn, requires State Farm to pay for such mitigation.²³ Appellant’s expert testified that after the roof tore and allowed water entry, it was necessary to repair the wall to protect the RV from additional damage.²⁴ Appellant argues the district court erred by declining to judicially notice Appellant’s weather data because the data proves the damage was sudden, since it highlights how more than two gallons of rain entered the RV wall in 34 minutes.²⁵

In summation, Appellant argues the Court should reverse the entry of summary judgment against him, because the efficient proximate cause doctrine applies to the Policy even though it requires the damage or loss to be “sudden.” Next, Appellant states the Court should hold the wall damage is a covered loss because the water entry qualifies as sudden damage when reasonably defined. Finally, Appellant argues the Court should hold the Policy’s mitigation clause required him to remove and repair the wall to protect the RV from additional damage, and thus requires State Farm to pay for the removal and repair.

B. Appellee State Farm’s Argument

Appellee argues Montana’s efficient proximate cause doctrine does not mandate coverage under the Kauls’ circumstances, and the unambiguous Policy terms at issue do not provide coverage for the RV damage, nor the costs of mitigation.²⁶ Appellee argues Appellant’s use of *Green and Park Saddle Horse Co. v. Royal Indemnity Company*,²⁷ which found coverage as a result of efficient proximate cause, is inappropriate because the rulings are narrow.²⁸ According to Appellee, in those cases, the subsequent losses at issue fell within coverage—if the loss was excluded, the doctrine was applied to overcome an applicable exclusion because it was not superseding specific policy language.²⁹ Appellee also argues that Appellant’s mitigation argument should be waived because he failed to raise it at the district court level.³⁰

²¹ *Id.*

²² *Id.* at 22.

²³ *Id.* at 29.

²⁴ *Id.* at 31.

²⁵ *Id.* at 22.

²⁶ Brief for Appellee, *supra* note 7, at 1.

²⁷ *Park Saddle Horse Co. v. Royal Indem. Co.*, 261 P. 880 (1927).

²⁸ Brief for Appellee, *supra* note 7, at 12–13.

²⁹ *Id.*

³⁰ *Id.* at 37.

Appellee argues the Policy is unambiguous, and the proximate cause doctrine cannot be used to rewrite unambiguous policy language or to ignore key terms in favor of coverage.³¹ Appellee contends the district court's holding balances contract law with *Park Saddle* and *Green*,³² and reversing its holding will have the effect of rewriting the Kauls' Policy.³³ According to Appellee, the Court has held the efficient proximate cause doctrine may apply to broaden the interpretation of a policy but cannot ignore clear and unambiguous policy language.³⁴

Appellee also challenges Amicus's argument advocating for adoption of a limitless efficient proximate cause doctrine.³⁵ Appellee argues the undisputed grant of coverage in the Policy is clear and unambiguous, and a limitless application of the efficient proximate cause doctrine is not supported by Montana law, nor consistent with public policy.³⁶

Appellee maintains the district court's holding was correct because the Policy's terms are unambiguous.³⁷ Appellee claims the damage to the RV wall is not a covered loss, because it is not sudden damage, and instead apprises the Court to reject Appellant's interpretation of the Policy. Courts, Appellee contends, "may not rewrite the contract at issue, but must enforce it as written if its language is clear and explicit."³⁸

C. Amicus MTLA's Argument

The Montana Trial Lawyers Association ("MTLA") argues the Court should re-endorse and clarify the efficient proximate cause doctrine.³⁹ MTLA states that the efficient proximate cause doctrine is good law, and insurance consumers in Montana should be granted coverage for all proximately caused insured risks.⁴⁰ MTLA asserts the doctrine complies with Montana law, public policy, and the "reasonable expectations of coverage" doctrine.⁴¹ This doctrine requires objectively reasonable expectations of policy holders be honored even if minutiae of certain policy provisions would have negated those expectations.⁴² MTLA maintains the efficient proximate cause doctrine provides insureds with what a reasonable person would expect from an insurance policy.⁴³ MTLA

³¹ *Id.* at 15.

³² *Id.*

³³ *Id.* at 22.

³⁴ *Id.* at 24.

³⁵ *Id.* at 3.

³⁶ *Id.* at 22.

³⁷ *Id.*

³⁸ *Id.* at 23.

³⁹ Brief for Amicus Curiae at 3, *Kaul v. State Farm*, <https://perma.cc/RT43-RV27> (Mont. May 16, 2020) (No. DA 20-0052).

⁴⁰ *Id.* at 17 (citing *Villella v. Pub. Employees Mut. Ins. Co.*, 725 P.2d 957, 961 (Wash. 1986)).

⁴¹ *Id.* (citing *Frontline Processing Corp. v. Am. Econ. Ins. Co.*, 149 P.3d 906, 911 (2006)).

⁴² *Id.* (citing *Meadow Brook, LLP v. First Am. Title Ins. Co.*, P.3d 608, 611 (2014)).

⁴³ *Id.*

contains an ordinary consumer would not expect to have coverage on such things as tree and hail damage, but not on consequential damages, such as the water infiltration here. MTLA argues the Court should expand the public policy benefits of larger coverage expectations for people in Montana.⁴⁴

IV. ANALYSIS

The main issue here is whether the RV's wall damage is a covered loss. In the past, the Court has narrowly ruled on efficient proximate cause and has never let the doctrine override unambiguous policy language. The outcome could change coverage law in Montana.

It is longstanding Montana law that damages proximately caused by a covered loss are covered under an insurance policy.⁴⁵ Any ambiguity in a policy must "be interpreted most strongly in favor of the insured and any doubts as to coverage are to be resolved in favor of extending coverage."⁴⁶ Given the protective purpose of insurance, exclusions are to be "narrowly and strictly construed."⁴⁷ Yet, in Montana, a court's interpretation of an insurance policy is a question of law.⁴⁸ Courts are required to interpret the policy's terms according to their usual, common sense meaning, from the perspective of a reasonable consumer of insurance products.⁴⁹ The general rule is to interpret any doubts as to coverage in favor of the insured, unless the policy language is clear and unambiguous.⁵⁰

In *Park Saddle*, a rancher was insured against direct loss surrounding saddle horses, and a ranch guest fell while hiking near their horse.⁵¹ The *Park Saddle* Court stated:

In determining the cause of loss for the purpose of fixing the insured's liability, when concurring causes of the damage appear, the proximate cause to which the loss is to be attributed is the dominant, the efficient, one that sets other causes in operation, and causes which are incidental are not proximate, though they may be nearest in time and place to the loss.⁵²

In *Green*, the Court analyzed whether coverage existed for fire damage and subsequent explosions under a policy insuring "against all direct loss or damage by fire," but exempting damage from explosions unless a fire had happened first.⁵³ The Court found the policy's language specifying no explosion coverage "unless fire ensues" granted coverage of

⁴⁴ *Id.* at 18.

⁴⁵ *Green*, 252 P. at 311; *Park Saddle*, 261 P. at 884.

⁴⁶ 247 P.3d 236, 239 (2010).

⁴⁷ *Id.*

⁴⁸ *Counterpoint, Inc. v. Essex Ins. Co.*, 967 P.2d 393, 395 (1998).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Green*, 252 at 311.

⁵² *Id.*

⁵³ *Id.*

the explosion.⁵⁴ The Court decided that because the fire caused the explosion, and the policy exception noted explosions caused by fire were not exempted from coverage, the doctrine of efficient proximate cause granted coverage of the explosion damage.

Here, the Policy's unambiguous language covers losses that resulted from direct, sudden, and accidental damage.⁵⁵ If the Policy's loss were defined as direct loss, coverage would be proper under this doctrine because the roof tear eventually caused the wall damage.⁵⁶ That said, unlike *Green* and *Park Saddle*, "loss" in the Policy is narrowly defined. Under Montana law, there would have to be a loss as defined by the Policy for Appellant's wall damage to be covered.⁵⁷ While the roof tear is a but-for cause of the damage to the RV wall, the wall damage is likely not a covered loss because the Kauls cannot prove the damage was sudden.

The Court will likely reject Appellant's argument that the rain damage was sudden, because, by definition, damage cannot be both sudden and gradual over multiple weeks. Appellant concedes the roof tear happened in March or April, but a bubble was not noticed until May.⁵⁸ Appellant continues to rely on NOAA evidence stating more than two gallons of rain entered the wall in 34 minutes. That said, this statistic addresses the amount of rainfall, not the immediacy of the water damage. The district court rejected this argument because it presupposes the wall damage was caused at the time of the rain, specifically on April 20. For these reasons, the Court's analysis concerning the nature of the rain damage will likely fall in favor of Appellees.

As explained in Montana Precedent, the Policy's terms must be interpreted according to their common sense meaning, from the perspective of a reasonable consumer, and enforced as written when clear and unambiguous.⁵⁹ For the doctrine of efficient proximate cause to mandate the wall's coverage, the Court would have to overturn the district court's ruling that the Policy's language is unambiguous and precludes coverage. Unlike *Green* and *Park Saddle*, the issue here turns on whether the damage from water infiltration was sudden as a matter of law. In *Kaul*, the Court should determine whether the policy's language precludes coverage or if a policy's coverage can be extended by the doctrine of efficient proximate cause.⁶⁰ The Court will likely uphold the district court's plain meanings of "damage," "loss," and "sudden," which will most likely determine the policy language precludes coverage of the wall damage.

⁵⁴ *Id.*

⁵⁵ Brief for Appellant, *supra* note 1, at 2.

⁵⁶ *Green*, 252 P. at 311.

⁵⁷ *Counterpoint, Inc.*, 967 P.2d at 395.

⁵⁸ Brief for Appellant, *supra* note 1, at 3.

⁵⁹ Brief for Appellant, *supra* note 1, at 28; *Counterpoint, Inc.*, 967 P.2d at 395.

⁶⁰ *Id.*; *Park Saddle* 261 P. at 884.

Appellant states the district court's decision was wrong because it said the Policy's language was clear and unambiguous, thus a narrowly construed legal doctrine could not be applied. Appellant's unique gradual damage situation and Policy are probably not similar enough to fall under the precedent set in *Green* and *Park Saddle*. If the Court ruled for the Appellant, it would set a precedent which may call into question segments of common policy language under various insurance policies when unexpected, uncovered losses could be proximately caused by a covered loss. The Court will likely uphold the ruling that the wall damage was not covered with this in mind.

V. CONCLUSION

State Farm originally covered the roof tear and some mitigation expenses the Kauls incurred to abide by their policy. The Court will likely uphold the district court's findings that, when interpreted in a common sense meaning, the Policy's language is clear and unambiguous. The Court will likely follow the precedent set in *Montana* and maintain the doctrine of efficient proximate cause cannot negate specific policy language. The Court will also likely uphold the district court's ruling that the policy requires State Farm to pay Kaul for reasonable expenses incurred to protect the RV from additional damage, excluding the costs directly related to the repair of the RV wall.