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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

STATE FARM GENERAL INSURANCE COMPANY, Plaintiff and Respondent, v. J.R. et al., Minors, etc., et al., Defendants and Appellants.	C050330 (Super. Ct. No. CVCS040723)

Appellants J.R and C.R. are children who were sexually molested by the minor son of Becky F., their family daycare home provider. In this action State Farm General Insurance Company (State Farm) obtained a declaration of no coverage for appellants' claim under a homeowners' insurance policy it issued to Becky F. The trial court's no coverage declaration is premised on two grounds: (1) an insurance policy exclusion for claims brought by persons in child care provided by the insured and (2) the prohibition of Insurance Code section 676.1,

subdivision (c)[1] for coverage for "for losses arising out of, or in connection with, the operation of a family day care home."

J.R and C.R. appeal contending the trial court erred in granting the declaratory relief in light of the doctrine of liability insurance policy coverage notwithstanding an applicable exclusion when there is multiple independent causation, as explained in *State Farm Mut. Auto. Ins. Co. v. Partridge* (1973) 10 Cal.3d 94 (*Partridge*).[2] We shall affirm the judgment.

FACTUAL BACKGROUND

Becky F. had owned and operated a licensed family daycare home at her residence since 1991. State Farm first issued a homeowners' insurance policy for her residence in 1992. The policy remained in effect until June of 2002. She decided not

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[1] Undesignated statutory references are to the Insurance Code.

[2] In *Partridge* the claimant passenger was injured when the car she was riding in hit a bump and a pistol in the car fired. The insured driver had been negligent both in modifying the pistol to discharge easily and in driving the vehicle off the road onto rough terrain. Notwithstanding a homeowners' policy coverage exclusion for injuries arising out of the use of an automobile, the Supreme Court found that homeowners' coverage for negligence in modifying the pistol applied. "[T]he crucial question presented is whether a liability insurance policy provides coverage for an accident caused jointly by an insured risk (the negligent filing of the trigger mechanism) and by an excluded risk (the negligent driving). Defendants correctly contend that when two such risks constitute concurrent proximate causes of an accident, the insurer is liable so long as one of the causes is covered by the policy." (*Partridge*, *supra*, 10 Cal.3d at p. 102.)

to purchase liability insurance for the daycare operation. She had all of her customers sign the written affidavit required by Health and Safety Code section 1597.531,[3] stating they had been informed that her facility did not carry insurance.

Sometime between June 1, 2000 and April 25, 2001, Becky F.'s son engaged in several acts of sexual molestation of J.R. (age five at the time) and at least two such acts on C.R. (age two at the time). All of the acts occurred when J.R. and C.R. were at Becky F.'s family daycare home for child care services.

A damages action was commenced on behalf of J.R. and C.R. against Becky F. and her husband alleging that they were reckless or negligent in failing to take action that would have prevented the sexual assaults. The gravamen of the allegation is as follows: The F.'s were aware that their son had been subjected to or engaged in significant sexual conduct when he was 10 or 11 during the summer of 2000 and that in October of 2000 he had "fondled" another child, age five, from the daycare. However, they took inadequate measures to cure his deviant propensity and took no steps to prevent him from "interacting" with children in the daycare.

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[3] Health and Safety Code section 1597.531, subdivision (a), in pertinent part, is as follows: "In lieu of [prescribed] liability insurance or the [alternative] bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state."

DISCUSSION

J.R. and C.R. contend the trial court erred in granting State Farm the no coverage declaration. They argue that the language of the policy exclusions for claims brought by or on behalf of persons in the care of an insured "because of child care services" is insufficient to bar coverage in light of *Partridge*. Their argument does not address the separate and logically prior basis for the judgment, that coverage is prohibited by section 676.1.[4] There is no flaw in the statutory rationale, and the appellants' contention of error has no merit.

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[4] Section 676.1 is as follows:

"(a) The arbitrary cancellation of a policy of homeowners' insurance solely on the basis that the policyholder has a license to operate a family day care home at the insured location shall subject the insurer to administrative sanctions authorized by this code unless, there has been a material misrepresentation of fact, the risk has changed substantially since the policy was issued, there has been a nonpayment of premium, or the insurer no longer writes homeowners[′] policies.

"(b) The arbitrary refusal to renew a policy of homeowners' insurance solely on the basis that the policyholder has a license to operate a family day care home at the insured location shall subject the insurer to administrative sanctions authorized by this code unless, there has been a material misrepresentation of fact, the risk has changed substantially since the policy was issued, there has been a nonpayment of premium, or the insurer no longer writes homeowners' policies. For purposes of this subdivision, an insured's purchase of a policy of homeowner's insurance to cover a new, primary residence from the same insurer which insured his or her previous primary residence, provided that the insurer then underwrites homeowners' insurance in the geographic area containing the new residence, shall be deemed a renewal of the policy on the previous, primary residence.

"(c) It shall be against public policy for a residential property insurance policy to provide coverage for liability for losses arising out of, or in connection with, the operation of a

Most liability insurance protects against the risk that attends a specific status. (See 1 Couch on Insurance (3d ed. 1997) § 1:34, p. 1-47.) Homeowners' insurance provides liability insurance for "noncommercial" risks of personal liability. (See, e.g., Ins. Code, § 122.) The exclusion of commercial risks fosters economic equity by allocating the widely varying commercial enterprise insurance costs to enterprises, rather than to the generic class of homeowners. However, the line between the zone of commercial risks and personal risks has not been easy to draw.[5]

In *Crane v. State Farm Fire & Cas. Co.* (1971) 5 Cal.3d 112 (*Crane*) our Supreme Court decided that injuries to a child in childcare were compensable notwithstanding that the homeowners' policy excluded "'business pursuits'" of insured, in view of

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family day care home. This coverage shall only be provided by a separate endorsement or insurance policy for which premiums have been assessed and collected."

[5] "Business pursuits exclusions may be found in several types of personal liability insurance policies, including practically all homeowners' policies. Though nearly all of the provisions employ virtually the same language, and have remained unchanged over several decades, the common and general nature of the operative terms and related policy definitions have engendered much debate over the meaning of the character and extent of the activities to which the provisions were intended to apply. The provisions not only include broad exclusionary language for liabilities 'arising out of business pursuits of an insured,' but almost invariably contain seemingly equally broad exceptions for 'activities therein which are ordinarily incident[al] to non-business pursuits.'" (Annot., Construction and Application of "Business Pursuits" Exclusion Provision in General Liability Policy (1996) 35 A.L.R.5th 375.)

exception to the exclusion for "'activities therein which are ordinarily incident to non-business pursuits.'" (*Id.* at p. 115.)

"Assuming that the care of the child constituted a business pursuit, such duties under the circumstances presented here were clearly incident to Mrs. Chamberlain's nonbusiness regimen of maintaining a household and supervising her own children. Indeed, it is difficult to conceive of an activity more ordinarily incident to a noncommercial pursuit than home care of children." (*Crane*, *supra*, 5 Cal.3d at p. 117.)

Some years after *Crane,* in 1985, a crisis of cancellation and unavailability of liability insurance for child care providers occurred. (See Stats. 1985, ch. 1362, § 5, pp. 4834-4835.) Section 676.1 was enacted as one part of the response to that crisis. (Stats. 1985, ch. 1362, § 2, pp. 4832-4833.) Section 676.1, subdivision (c), prohibits, without a specific separate endorsement, homeowners' policy liability coverage for losses "arising out of, or in connection with, the operation of a family day care home." The statute also prohibits arbitrary cancellation or refusal to renew homeowners' insurance because the insured is engaged in a daycare business. (§ 676.1, subds. (a) & (b).)

Section 676.1 is not a provision of an insurance policy drafted by an insurer. It is not read as one part of an integration of many contract terms. Nor are the doctrines which apply to reading of clauses of an insurance policy applicable.

(Cf., e.g., *Prudential-LMI Com. Ins. v. Superior Court* (1990) 51 Cal.3d 674, 684.) The prohibition of liability coverage for losses "arising out of, or in connection with, the operation of a family day care home" (§ 676.1, subd. (c)) is a statutory directive. As such, we follow the ordinary rules for reading a statute.

"When interpreting a statute our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent." (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.) On its face, section 676.1 precludes coverage of appellants' claim against Becky F. and her husband under their homeowners' insurance policy. If established, the claim is a loss "arising out of, or in connection with, the operation of [Becky F.'s] family day care home" (§ 676.1, subd. (c)).

The only way suggested by appellants to evade this bar is to show that section 676.1 is ambiguous in light of the 1973 *Partridge* doctrine.[6] The *Partridge* theory would dictate that the no coverage provision of section 676.1 can reasonably be read to say there can be coverage when liability arises out of "non-[daycare]-related conduct" as well as "[daycare]-related

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[6] See footnote 2, *ante*.

conduct." We will examine this prospect, for the sake of argument.

"If, however, the language [of a statute] is susceptible to more than one reasonable interpretation, then we look to 'extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.'" (*Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.)

Read as a whole, the purpose of section 676.1 is to make homeowners' insurance available for those who operate a family daycare home by preventing increased liability exposure as a result of that endeavor, unless there is a separate, incremental premium to cover that risk. If insurers are subject to greater uncompensated exposure as a result of operation of a family daycare home, they have an incentive to "cherry pick," i.e., to cancel or to refuse to renew those homeowners. A reading of section 676.1 which allows coverage for losses "arising out of, or in connection with, the operation of a family day care home" under the concurrent cause reasoning in *Partridge*, conflicts with the purpose of the statute.

Using *Partridge* terminology, the perils that attend the operation of a family daycare home cannot sensibly be parsed into independent "non-[daycare]-related conduct" and "[daycare]-related conduct." As *Crane* notes, the perils of such an operation consist in large measure in exposing additional

vulnerable children to perils already found in the provider's household. Applying the rationale of *Partridge* would effectively nullify the coverage exclusion of section 676.1. (Cf. *Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal.3d 395, 399.)

For all the foregoing reasons, we conclude the *Partridge* doctrine does not render section 676.1 ambiguous. (See *Partridge*, *supra*, 10 Cal.3d 94.) The statute cannot reasonably be read to say there can be homeowners' coverage when liability arises out of "non-[daycare]-related conduct" as well as "[daycare]-related conduct." The trial court did not err in granting State Farm a declaration of no coverage.

DISPOSITION

The judgment is affirmed. State Farm shall recover its costs on appeal. (Cal. Rules of Court, rule 27(a).)

BUTZ, J.

We concur:

SIMS, Acting P. J.

ROBIE, J.