WILLIAM G. HALL, Plaintiff/Appellant, v. ALLSTATE INSURANCE COMPANY, Defendant/Appellee.	)	Appeal No. 01-A-01-9607-CV-00305 Rutherford Circuit No. 32430

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CIRCUIT COURT FOR RUTHERFORD COUNTY

AT MURFREESBORO, TENNESSEE

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AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE

OPINION

This is an appeal by plaintiff/appellant, William G. Hall, from the trial court's judgment entered in favor of defendant/appellee, Allstate Insurance Co. The dispute involved Allstate's failure to pay an insurance claim filed by Hall.

Hall owned a 1988 Ford Ranger Truck. On 6 February 1993, a fire totally destroyed the truck. Hall, his brother, and his brother-in-law were present at the time of the fire. There is no dispute that there was a valid insurance policy, which insured Hall's truck against loss due to fire, in effect at the time of the accident. The policy defined a loss as a "direct and accidental loss."

Allstate investigated Hall's claim by hiring an expert to examine the truck. It was the opinion of the expert that the fire was not accidental, but that an incendiary liquid caused the fire. Allstate determined that the policy did not cover the fire because it was not an accidental loss and denied Hall's claim.

Hall filed a complaint against Allstate on 5 October 1993 in the Circuit Court for Rutherford County. In its answer, Allstate admitted that it insured Hall's truck and that the truck was totally destroyed. In its defense, however, Allstate alleged that Hall made material misrepresentations as to the cause and origin of the fire and that these misrepresentations constituted fraud and voided the policy ab initio. Allstate also filed a counter-claim alleging that Hall did not bring his claim in good faith.

At an evidentiary hearing on 7 March 1996, the following persons testified: 1) Hall; 2) Hall's brother; 3) Hall's brother-

in-law; 4) David Meador, Chief of the Rutherford County Fire Department; and 5) Jerry Russell Carter, the arson investigator retained by Allstate. Thereafter, the court wrote a letter setting forth its findings and conclusions. In the letter, which the court incorporated into the final judgment, the court made separate findings regarding the claim and counter-claim. The court first addressed Hall's claim and found that the testimony of Hall and the arson investigator were inconsistent and that the Fire Chief's testimony did not favor either party. As a result, the court found that Hall failed to carry his burden of proof and awarded judgment in favor of Allstate. The court then addressed Allstate's bad-faith claim. The court found that Allstate failed to establish motive and concluded that Allstate failed to satisfy its burden of showing bad faith on Hall's part.

Thereafter, Hall filed a timely notice of appeal. He presented two issues which we discuss together. They are as follows:

> I. That the trial court erred as a matter of law in failing to enter a judgment for the Plaintiff insured after specifically finding as the trier of fact that there was no proof of motive for a willful burning by the Plaintiff.
> II. That the trial court erred as a matter of law, in holding that the Plaintiff insured had the burden of proof as to the nonexistence of an exception or defense to the insurance policy.

We review this matter de novo upon the record of the trial court. A presumption of correctness accompanies the trial court's findings of fact. Thus, this court will not disturb those findings unless the evidence preponderates against them. Tenn. R. App. P. 13(d) (West 1996).

It is well established in this state that a "claimant under an insurance policy must prove the existence and validity of the policy and the details of the claim." ***First Am. Nat'l Bank v.***

Fidelity & Deposit Co., 5 F.3d 982, 984 (6th Cir. 1993). Allstate admits that the insurance policy was valid and in existence at the time of the loss, but contends that Hall failed to prove the details of his claim. We agree.

The courts of this state have held that ordinary rules of contract construction apply to insurance policies. *McKinn v. Bell*, 790 S.W.2d 526, 527 (Tenn. 1990). Our courts have also determined that courts have a duty to enforce insurance policies as they are written. *Spears v. Commercial Ins. Co.*, 866 S.W.2d 544, 548 (Tenn. App. 1993). If there is no ambiguity in the insurance policy, it is the court's duty to take the ordinary meaning of the words used and favor neither party. *Omaha Property & Cas. Ins. Co. v. Johnson*, 866 S.W.2d 539, 541 (Tenn. App. 1993). Section III of the policy issued to Hall by Allstate provided: "'loss' means direct and accidental loss of or damage to (a) the automobile, including its equipment, or (b) other insured properties . . . ." Therefore, the policy would not cover Hall's loss unless it was direct and accidental. Hall had the burden of proving these details of his claim.

David Meador, Chief of the Rutherford County Fire Department, testified that he responded to the fire call. He found no extensive fire damage and/or burning to the bed of the truck. Chief Meador stated that he had never seen anything like the fire or heard of anything burning in that manner before. The trial court found a portion of Chief Meador's testimony supported the contention that "the flame spread far too rapidly and that the vehicle was too completely involved for ignition to have occurred from an accidental, non-incendiary means." There was also evidence from Jerry Russell Carter, the arson expert. Mr. Carter's investigation revealed that the cause of the fire was incendiary and that it was intentionally set. He based his findings on the

fire flow patterns found within the vehicle. Mr. Carter examined the vehicle and saw no evidence of the fire starting as a result of a systems failure. It was his opinion that the type of burning indicated the presence of a flammable or combustible liquid. He also found an actual pour pattern where a liquid had been poured on the vehicle and set on fire. The trial court credited Mr. Carter's testimony, finding that "the fire could not have started under the dashboard of the truck or in such manner that smoke would have first appeared through the defroster vents as Hall asserts, but rather that the origin of the blaze was from a pore [sic] of an incendiary liquid within the passenger compartment of the vehicle."

The district court addressed a similar issue in 1994. ***Smith v. Life Ins. Co.***, 872 F. Supp. 482 (W.D. Tenn. 1994). The plaintiffs in ***Smith*** were beneficiaries under an accidental death insurance policy. At trial, they were unable to prove that the death of the insured was accidental within the terms of the policy. As a result, the court held that the benefits were not payable. The court found "that plaintiffs had not met their burden of proving that decedent's death was 'caused by accident . . . which, [results] directly and from no other causes' as required by the terms of the policy." ***Id.*** at 485; ***see also Gilmore v. Continental Cas. Co.***, 188 Tenn. 588, 591, 221 S.W.2d 814, 815 (Tenn. 1949) (finding the burden is on the plaintiff to show that death resulted from an accidental injury.)

It was Hall's burden at trial to show that the loss fell within the terms of the insurance policy. We are of the opinion that the trial court's finding that Hall failed to prove the accidental nature of the fire and the entry of judgment in favor of Allstate was proper. There is ample evidence from which the trial court found that the loss to the pickup truck was not accidental and that Hall failed to meet his burden of showing that a covered

loss occurred. The preponderance of the evidence supports the judgment of the trial court.

The judgment of the trial court is affirmed with costs assessed to the plaintiff/appellant, William G. Hall. The cause is remanded to the trial court for further necessary proceedings.

SAMUEL L. LEWIS, JUDGE

CONCUR:

HENRY F. TODD, PRESIDING JUDGE,
MIDDLE SECTION

WILLIAM C. KOCH, JR., JUDGE