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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

280

Filed October 23, 1984

NORMAN AND DENISE DOCHTERMAN,

Plaintiffs-Appellants,

vs.

CLARENCE KRUSE,

Defendant,

CRAIG WELT, PAUL C. McCOY & CO.,

Defendants-Appellees,

and AETNA CASUALTY AND SURETY COMPANY,

Defendant.

4-332
84-01

Appeal from the Iowa District Court for Linn County - William L. Thomas, Judge.

Plaintiffs appeal from the trial court's granting of summary judgment in favor of defendants in an action arising from an automobile collision. AFFIRMED.

Mary K. Hoefer, Iowa City, Iowa; Tom Riley and Thomas M. Wertz, Cedar Rapids, Iowa, for plaintiffs-appellants.

Robert E. Konchar and J. Michael Weston of Moyer & Bergman, Cedar Rapids, Iowa, for defendant-appellee Welt.

Stephen D. Lombardi and Craig H. Mosier of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, Iowa, for defendant-appellee McCoy.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

Plaintiffs appeal from the trial court's granting of summary judgment in favor of defendants Welt and McCoy in an action arising from an automobile collision. Plaintiffs assert that the defendant-agents had a duty to advise and recommend higher limits of uninsured motorist coverage. We affirm.

Plaintiffs, Norman and Denise Dochterman, were injured when their car was struck by a vehicle driven by defendant Clarence Kruse. Kruse was uninsured. Plaintiffs carried the minimum uninsured motorist coverage required by statute, see Iowa Code section 516A.1, and were paid that amount by defendant Aetna Casualty and Surety Company. Plaintiffs' damages exceeded that amount, however. Plaintiffs allege in the present action that defendant Paul C. McCoy & Company and its employee, defendant Craig Welt, breached a duty to them by failing to inform them of the availability of uninsured motorist coverage in an amount greater than the minimum required by statute. Plaintiffs claim that if they had been informed they would have carried $100,000 coverage, the same limit as their liability for bodily injury.

The facts are essentially undisputed. Plaintiff Denise Dochterman's father, James Bahr, who had no special knowledge of insurance, maintained her automobile insurance with Mutual Service Casualty Company through another agency. Shortly before that policy was due for renewal, Bahr walked into the McCoy agency, handed Welt the renewal notice from Mutual, and stated that he wanted to take out a policy for his daughter comparable to that one. The conversation between Bahr and Welt lasted approximately ten minutes. The only prior contact Bahr had with the McCoy agency was when he took out builder's risk insurance. Plaintiffs admit that the Aetna policy procured by Welt had coverage comparable to their prior policy with Mutual.

Our review of this action at law is on assigned error. Iowa R. App. P. 4. In order for a party to be entitled to summary judgment under Iowa Rule of Civil Procedure 237(c) the burden is on that party to show that there is no genuine issue

of material fact and that the moving party is entitled to a judgment as a matter of law. Sandbulte v. Farm Bureau Mutual Insurance Co., 343 N.W.2d 457, 464 (Iowa 1984). The court examines the record in the light most favorable to the nonmoving party to determine whether this burden has been met. Id.

In Collegiate Manufacturing Co. v. McDowell's Agency, Inc., 200 N.W.2d 854, 856 (Iowa 1972), the plaintiff sued an insurance agency for negligent failure to provide adequate coverage. Plaintiff claimed that it relied upon defendant's expertise to acquire coverage for its fluctuating inventory. Although such coverage was procured, plaintiff complains that defendant did not inform it of the $280,000 limit, an amount substantially less than plaintiff's $394,000 fire loss. Id. The supreme court first rejected defendant's claim that it was an agent of the insurer and not the insured. Id. at 857. The court held that defendant was "obligated to perform his duties toward plaintiff with reasonable care and diligence." Id. The court failed, however, to find any greater duty owed by defendant under the facts of this case. The court stated:

> A review of the record discloses no evidence to sustain plaintiff's position there was any agreement or arrangement which would enlarge defendant's duty beyond the general duty an agent owes his principal. It is true plaintiff relied on defendant, had great confidence in him, and frequently followed his advice on insurance matters; but this is usually the case. There is no evidence of any agreement, express or implied, that defendant was to assume responsibility far beyond that which would normally attach to his conduct as plaintiff's agent. The principal-agent relationship cannot be so drastically expanded unilaterally.

Id. at 857-58.

The supreme court recently relied on its decision in Collegiate Manufacturing in deciding Sandbulte v. Farm Bureau Mutual Insurance Company, 343 N.W.2d at 464. In Sandbulte the plaintiffs sued their insurance agents alleging the breach of an implied expanded agency agreement to " 'advise plaintiffs of the extent of their liability insurance coverage, and suggest and implement for

plaintiffs proper, complete and adequate liability insurance coverage.' " Id. at 461. The record indicated that plaintiffs had purchased insurance from defendants for several years and had received satisfactory service. It was also shown that plaintiffs requested "sufficient coverage" on their automobile and were assured that the policy provided "sufficient coverage." Id. at 465. On these facts the supreme court held there was no genuine issue of material fact on the question of an expanded agency agreement and that defendant-agents were entitled to summary judgment as a matter of law. Id.

The facts of the present case are far less indicative of an expanded agency agreement than the facts of either Collegiate Manufacturing or Sandbulte. Here, although there had been one prior contact between Bahr and the agency, there was no evidence that Bahr relied on the agent or placed special confidence in him based on several years of contact. Furthermore, Bahr did not request sufficient coverage for his daughter but specifically requested coverage comparable to what he already had. There is no evidence to support plaintiffs' contention that they relied on defendant's expertise to advise them of proper coverage. The evidence clearly shows that they requested a specific coverage and defendants fulfilled their duty of due care by procurring the coverage requested.

Plaintiffs attempt to distinguish Sandbulte on two grounds. First they claim in Sandbulte the issue was whether defendants had a duty to advise higher liability limits whereas in this case the issue is whether defendants had a duty to inform them that higher limits were available. Second, plaintiffs argue that uninsured motorist coverage is relatively new and unfamiliar compared to the ordinary liability coverage at issue in Sandbulte, making it more necessary for the agent in this case to discuss the limits with the insured. We do not find these differences so significant as to change the result in this case. As in Sandbulte, defendants McCoy and Welt have met their burden and are entitled to summary judgment as a matter of law.

AFFIRMED.