IN THE COURT OF APPEALS OF IOWA

No. 7-660 / 96-1842
Filed June 24, 1998

WAEL CHRISTOPHER LABBAN,
Appellant,

vs.

PRUDENTIAL PROPERTY &
CASUALTY INSURANCE COMPANY,
Appellee.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Labban appeals from the district court's grant of summary judgment to defendant insurer. **AFFIRMED.**

Joel W. Bittner, Altoona, for appellant.

James C. Huber and Debra Stein of Huber, Bouk, Cortese, Happe & Brown, P.L.C., Des Moines, for appellee.

Considered by Sackett, P.J., and Streit and Mahan, JJ.

STREIT, J.

Labban appeals from the district court's grant of summary judgment to defendant. Because the New Jersey six-year statute of limitations applies to this case and under New Jersey law Labaan's claim accrued in 1986, his claim is barred under the statute.

I. Background & Facts.

On July 5, 1986, the plaintiff, Wael Labban, was in an automobile accident in West Des Moines, Iowa. Cheryl Lane was driving the other automobile. At the time of the accident, Labban was residing in Iowa and attending his second year of medical school. Labban was driving a car owned by his father and registered in New Jersey. His father, a New Jersey resident, obtained automobile insurance for the car with defendant, Prudential Property & Casualty Insurance Company, through a New Jersey agent.

Labban filed a lawsuit against Lane in 1988. She offered to settle the claim for her policy limits of $25,000. Labban also made a claim against Prudential for underinsured motorist coverage. Prudential accepted Lane's settlement offer in October of 1989, but denied Labaan's underinsured motorist claim.

In August of 1995, Labban filed a claim against Prudential in Iowa seeking to recover underinsured motorist benefits and alleging Prudential made misrepresentations regarding policy coverage. In its answer, Prudential asserted Labban's claim was barred by New Jersey's six-year statute of limitations.

Subsequently, Prudential filed a motion for summary judgment on the same this basis.

During the course of the litigation, Labaan's counsel filed a motion to withdraw claiming he was needed as a witness in the misrepresentation claim against Prudential. Labban also filed a motion for a continuance on the motion for summary judgment until the other motions were decided. The district court denied the motion for continuance and indicated the motion to withdraw would be considered after the motion for summary judgment.

After a hearing, the district court granted Prudential's motion for summary judgment based on the statute of limitations defense. Labban filed a 179(b) motion which was denied. Labban appeals.

II. Standard of Review.

Our review of the grant of summary judgment is at law. Iowa R. App. P. 4. On appeal we determine whether a genuine issue of material fact exists and if the law was correctly applied. *Schuver v. E.I. Du Pont de Nemours & Co.*, 546 N.W.2d 610 (Iowa 1996); *see C-Thru Container v. Midland Mfg.*, 533 N.W.2d 542, 544 (Iowa 1995). The moving party has the burden to show the nonexistence of a material fact. *Id.* A fact issue is generated if reasonable minds can differ on how the issue should be resolved. *Id.* If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Farm Bureau Mutual Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988).

III. Choice of Law.

In Iowa, the statute of limitations on written contracts is ten years. Iowa Code § 614.1(5) (1997). In New Jersey, the statute of limitations on written contracts is six years. N.J. Stat. Ann. 2A: 14-1 (1997).[1] Because a true conflict exists between the Iowa and New Jersey statute of limitations for contract actions, the first step of our analysis is to determine whether Iowa or New Jersey law applies. Iowa law is used to analyze the limited question of whether the Iowa or foreign state's substantive law applies to the case. *World Plan Executive Council-U.S. v. Zurich Ins. Co.*, 810 F.Supp. 1042 (S.D. Iowa 1992).

Choice-of-law issues in insurance policy cases are determined by the intent of the parties or the most significant relationship test. *Gabe's Const. Co., Inc. v. United Capitol Ins. Co.*, 539 N.W.2d 144, 146 (Iowa 1995). If the policy does not contain a choice-of-law clause, the law of state which has the most significant relationship to the transaction and the parties governs. *Id.* The most significant relationship test is a consideration of the following factors: (a) the place of contracting; (b) the place of negotiation of the contract; (c) the place of performance; (d) the location of the subject matter of the contract; and (e) the domicile, residence, nationality, place of incorporation, and place of business of the parties. *Id.* (citing Restatement (Second)

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[1] The statute states: "Every action . . . for recovery upon a contractual claim or liability . . . shall be commenced within 6 years next after the cause of any such action shall have accrued." N.J. Stat. Ann. 2A:14-1 (1997).

of Conflict of Laws § 188(1988)). These contacts are to be evaluated according to their relative importance with respect to the particular issue. *Id.*

Applying these factors to the circumstances of this case, we decide if the district court correctly determined the law of New Jersey governed this case. There is no choice-of-law provision in the insurance policy. Thus, the law of the state which has the most significant relationship governs. In this case the facts overwhelmingly establish New Jersey has the most significant relationship with the transaction and the parties. At the time the contract was formed, the insured was a resident of New Jersey. The vehicle involved in the accident was registered in New Jersey and had New Jersey license plates. The insurance agent who sold the policy conducted business in the state of New Jersey. The policy was negotiated and signed in New Jersey. Although the plaintiff briefly resided in Iowa while attending medical school, he is no longer a resident of the state. He now lives in New York. Under this set of circumstances the trial court did not err in determining Labban's claim was governed by New Jersey substantive law.

IV. Statute of Limitations.

Even when it has been determined the substantive law of another state applies, the procedural law of Iowa still applies to the case. *Harris v. Clinton Corn Processing Co.*, 360 N.W.2d 812, 814 (Iowa 1985). Statutes of limitation have traditionally been viewed as procedural rather than substantive. *Cameron v. Hardisty*, 407 N.W.2d 595, 596-97 (Iowa 1987). Thus, Iowa courts generally apply the Iowa

statutes of limitation regardless of which state's substantive law governs the case. *Harris*, 360 N.W.2d at 814.

In *Harris* and *Cameron* the supreme court noted the general rule that Iowa's statute of limitations applies even when the substantive law of another jurisdiction governs was consistent with the Restatement (Second) of Conflict of Laws § 142 (1971), which provided:

> . . .
>
> (2) An action will be maintained if it is not barred by the statute of limitations of the forum, even though it would be barred by the statute of limitations of another state, except as stated in § 143.

The supreme court also adopted the exception to this general rule which was set out in the Restatement (Second) of Conflict of Laws § 143 (1971). *Harris v. Clinton Corn Processing Co.*, 360 N.W.2d 812, 816 (Iowa 1985). That exception stated: "An action will not be entertained in another state if it is barred in the state of [the] otherwise applicable law by a statute of limitations which bars the right and not merely the remedy." *Id.*; Restatement (Second) of Conflict of Laws § 143 (1971). The supreme court's rationale in adopting the exception was based on a dissatisfaction with classifying statutes of limitations as procedural for choice of law purposes, to prevent forum shopping, and prevent Iowa courts from stale claims. *Id.; see also Cameron*, 407 N.W.2d 595, 597 (Iowa 1987).

Since *Harris* and *Cameron* were decided, the Restatement (Second) of Conflicts has been revised. Sections 142 and 143 have been replaced by a new

section 142 which contains a general rule and exception regarding the applicablility of statutes of limitations. The new Restatement section states:

> . . .
> In general, unless the exceptional circumstances of the case make such a result unreasonable:
> (1) The forum will apply its own statute of limitations barring the claim;
> (2) The forum will apply its own statute of limitations permitting the claim unless:
> (a) maintenance of the claim would serve no substantial interest of the forum; and
> (b) the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence.

Restatement (Second) of Conflict of Laws § 143 (1988).

We decide this issue under the revised Restatement, section 142.[2] The supreme court has given "widespread acceptance" to Restatement (Second) Conflict of Law principles on choice of law issues. *Harris*, 360 N.W.2d at 814; *Cameron*, 407 N.W.2d 595, 597 (Iowa 1987). The principles of preventing Iowa courts from entertaining stale claims and forum shopping by litigants are already embodied in Iowa case law. *See Harris*, 360 N.W.2d 812, 816 (Iowa 1985); *Cameron*, 407 N.W.2d 595, 597 (Iowa 1987). Adoption of the revised section 142 is only further acceptance of these principles.

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[2] Under the new Restatement statutes of limitations are not ipso facto procedural and goverened by the law of the forum. Rather, the courts select the state whose law will be applied to the issue of limitatations by a process essentially similar to that used in the case of other issues of chioice of law. Restatement (Second) of Conflicts of Law § 143 cmt. e. (1988)

As already discussed, New Jersey has a more significant relationship with this litigation than Iowa. Iowa has no substantial interest in this claim. The New Jersey six-year statute of limitations applies. The district court was correct is so holding.

V. Accrual of Plaintiff's Claim.

Labban argues even if the New Jersy statute of limitations applies, his claim is not barred because his claim did not accrue until Prudential denied him coverage under the underinsured motorist provision of his policy. As stated, the substantive law of New Jersey governs this case. Under New Jersey law, the statute of limitations on claims for underinsured motorist benefits runs from the date of the accident. *Green v. Selective Insurance Co. of America*, 676 A.2d 1074, 1078 (N.J. 1996). The plaintiff's accident occurred in 1986. His claim is barred under the six-year statute of limitations.

Neither the plaintiff's motion to continue or motion for withdrawal articulated points necessary for deciding the motion for summary judgment. The court's grant of summary judgment would not have been affected by the denial or grant of those motions. Because the district court's summary judgement has been upheld, the other motions are now moot.

AFFIRMED.