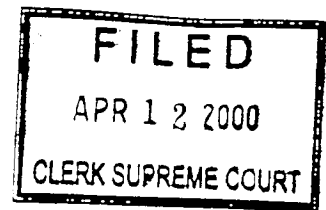


IN THE COURT OF APPEALS OF IOWA

No. 0-102 / 99-0780
Filed April 12, 2000



AMERICAN FAMILY MUTUAL INSURANCE COMPANY,
Plaintiff-Appellee,

vs.

**DIANA RUTENBECK, DAVID RUTENBECK,
JOHN MCDERMOTT and REBECCA MCDERMOTT,**
Defendants-Appellants.

Appeal from the Iowa District Court for Jackson County, Mark J. Smith,
Judge.

Defendant-appellants Diana Rutenbeck, David Rutenbeck, John McDermott and Rebecca McDermott appeal from the district court's judgment against them, contending the court erred when it (1) found there was an implied contract between defendants and plaintiff, American Family Mutual Insurance Co.; (2) ordered defendants to reimburse the insurance company for the medical payments it made to them; and (3) found defendants would be unjustly enriched unless they were ordered to reimburse the company for these medical expenses.

AFFIRMED.

George F. Davison, Jr. of Hawkins and Norris, Des Moines, for appellants.

Anne M. Henry, Bettendorf, for appellee.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, J.J. Hecht, J. takes
no part.

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SACKETT, C.J.

Defendant-appellants Diana Rutenbeck, David Rutenbeck, John McDermott and Rebecca McDermott appeal from the district court's judgment against them, contending the court erred when it (1) found there was an implied contract between defendants and plaintiff, American Family Mutual Insurance Co.; (2) ordered defendants to reimburse the insurance company for the medical payments it made to them; and (3) found defendants would be unjustly enriched unless they were ordered to reimburse the company for these medical expenses. We affirm.

On August 21, 1994, a car driven by John Swacker and owned by his mother collided in an intersection with a car owned and driven by Ronald Potter. Swacker pled guilty to failing to obey a red light. Defendants, passengers in Potter's car, were all injured in the accident and required medical treatment.

At the time of the accident, plaintiff insured Potter's car. Part II of the policy contained medical payment and subrogation provisions as follows:

PART II – MEDICAL EXPENSE COVERAGE

We will pay reasonable medical expenses for appropriate and necessary medical . . . services performed within one year of the accident because of an accident related bodily injury to an insured person.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

4. Insured person or insured persons means:

b. Any other person while occupying your insured car.

PART VI – GENERAL PROVISIONS

5. Our Recovery Rights. If we pay under this policy, we are entitled to all the rights of recovery of the person to whom payment was made against another.

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On November 15, 1994, the McDermotts filed suit against the Swackers and included claims for medical expenses, pain and suffering and other damages. In November of 1994, defendants' attorney wrote to plaintiff and submitted their medical bills to plaintiff "for consideration under the medical payment provisions of the policy." He also informed plaintiff about the lawsuit against the Swackers. In December of 1994, the Rutenbecks joined the lawsuit. Their medical bills were also submitted to plaintiff.

In September of 1995, plaintiff sent a letter to defendants' attorney in which it indicated it had paid defendants' medical bills in the following amounts: \$2,623.11 for Diana Rutenbeck, \$3,049.50 for David Rutenbeck, \$1,964.59 for Rebecca McDermott and \$2,124.71 for John McDermott. It also requested to be advised as to the status of the case and that it would like to be involved if any settlement negotiations were attempted. Defendants' lawyer wrote plaintiff a letter in which he asked if it could confirm if a right of subrogation was claimed for the medical expenses paid. He further stated they anticipated the medical expenses paid by plaintiff would be part of the damages sought on behalf of his clients. Plaintiff responded by confirming its intent to assert a right of subrogation for medical expenses and sent defendants' lawyer a copy of Potter's insurance policy.

Defendants never sued Potter for damages arising out of the accident and did not claim he was negligent in the accident.

In January of 1997, defendants' suit against the Swackers was settled. The settlement agreement provided for the Rutenbecks to receive \$21,000 and the McDermotts to receive \$15,000 in damages. In the settlement agreement there was no delineation of the amount designated for medical expenses.

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On January 16, 1998, plaintiff filed a petition against defendants, claiming breach of contract and unjust enrichment. Plaintiff filed a motion to adjudicate law points and on the merits. The court found there was a contract between plaintiff and defendants in which defendants "implicitly" agreed to honor the subrogation portion of the policy regarding medical expenses. It ordered judgment to be entered against defendants for the medical bills plaintiff had paid.

In a law action, we review a district court's determination for errors in its application of legal principles and conclusions of law. *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995). We can affirm a trial court judgment on any ground, whether urged or not. *Harbit v. Voss Petroleum, Inc.* 553 N.W.2d 329, 330 (Iowa 1996).

An insurer has the right of reimbursement for medical expenses it has paid to its insured which are subsequently recovered by the insured from a third party. See *Ludwig v. Farm Bureau Mut. Ins. Co.*, 393 N.W.2d 143, 145 (Iowa 1986). The insurer is entitled to recovery of these payments even if the insured has recovered other damages in a settlement. *Id.* at 147. This is in accordance with the purpose of subrogation to prevent unjust enrichment of one party at the expense of another. *Id.* at 146-47; see Restatement of Restitution § 162 at 653 (1937); 73 Am. Jur. 2d Subrogation § 4 at 601 (1974).

In *Hein v. American Family Mut. Ins. Co.*, 166 N.W.2d 363, 365 (Iowa 1969), it was held that medical services clauses of automobile policies which protect persons in addition to the insured are a type of third-party beneficiary health insurance contract for which the insurer charges a separate portion of the total premium. Such contracts are not dependent on the negligence of the insured. *Id.* A primary question is whether the insurance contract Potter had

with plaintiff manifests an intent to benefit a third party. *Tredrea v. Anesthesia & Analgesia, P.C.*, 584 N.W.2d 276, 281 (Iowa 1998).

Insurance contracts should be construed as a whole, and the clear and unambiguous language must be given its plain meaning. *Id.* In the present case, "insured person(s)" is defined in Potter's contract with plaintiff as including "[a]ny other person while occupying your car." Therefore, defendants, as occupiers of Potter's car, were intended beneficiaries of the medical expense provision of the contract.

Further, the Iowa Supreme Court has held acceptance of medical payments by a person other than the insured that is protected by a health insurance policy entitles an insurer to a portion of settlement proceeds arising out of its right of subrogation under the policy. See *Ames v. Ratliff*, 471 N.W.2d 803, 806 (Iowa 1991). In *Ames*, the court found the health insurer, by its payment of medical expenses, acquired a propriety interest in the estate's wrongful death claim to the extent of its payment. *Id.* Similarly, in case at bar, when plaintiff paid defendants' medical expenses it obtained a propriety interest, to the extent of the amounts it paid, in defendant's settlement proceeds from the lawsuit against the Swackers.

Accordingly, we affirm the decision of the district court and find plaintiff is entitled a portion of the settlement proceeds arising out of defendants' lawsuit with the Swackers in the amount it paid to defendants for medical expenses under the medical expense provision of its contract with Potter.

AFFIRMED.

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