IN THE COURT OF APPEALS OF IOWA

No. 5-227 / 94-1087

COLONIAL INSURANCE COMPANY OF CALIFORNIA,

Plaintiff-Appellant/Cross-Appellee,

vs.

PAUL DUANE ERVIN, JR.,

Defendant-Appellee/Cross-Appellant.

FILED
AUG 17 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Plaintiff appeals, and defendant cross-appeals, from a district court order granting defendant's motion for summary judgment in this subrogation action.

AFFIRMED.

Jeffrey P. Taylor of Klinger, Robinson, McCuskey & Ford, Cedar Rapids, for appellant.

Andrew B. Prosser of Dailey & Riley, Burlington, for appellee.

Considered by Donielson, C.J., Cady, J., and Perkins, S.J.*

*Senior Judge from the from the Fifth Judicial District serving on this court by order of the Iowa Supreme Court.

PERKINS, S.J.,

On June 9, 1991, Joseph and Angela Noble and Paul Ervin, Jr. were in an automobile accident in which Ervin's vehicle struck the Nobles' vehicle. Ervin did not have insurance. The Nobles were insured by Colonial Insurance Company of California. Colonial paid $20,000 to the Nobles under the uninsured motorist provision of their policy.

On August 13, 1993, Colonial filed an action for subrogation against Ervin. The petition alleged Ervin's negligence was the proximate cause of the damage to the Nobles' vehicle totalling $20,000.

Ervin filed a motion to dismiss, claiming Colonial's action was barred by the statute of limitations because it was filed more than two years after the accident. The district court determined that if the suit was based on injuries to the Nobles, the two-year statute of limitations found in Iowa Code section 614.1(2) would apply and the action would be barred. The court noted, however, the petition alleged damages to the Nobles' vehicle, and this would be classified as an action founded on an injury to property. The statute of limitations for an action based on injury to property is five years under section 614.1(4). The court denied the motion to dismiss.

During discovery, Ervin learned the Nobles' settlement agreement with Colonial did not include any amount for property damage. The Nobles had reserved to themselves any action for property damage against Ervin.

Ervin filed a motion for summary judgment. He claimed that because the settlement agreement between Colonial and the Nobles specifically excluded any property damage claim, the settlement could only be for personal injury damages. Ervin argued Colonial's only claim against him would be for personal injury damages, and such a claim would be barred by the statute of limitations.

Ervin also sought sanctions against Colonial pursuant to Iowa Rule of Civil Procedure 80. He claimed Colonial had improperly claimed its suit was for damages to the Nobles' vehicle in order to avoid the statute of limitations, when actually Colonial's claim was for personal injury damages.

Colonial filed a motion to amend its petition. It stated that through a scrivener's error the word "vehicle" had been used in the petition instead of the word "property." Colonial sought to amend its petition to allege that Ervin's negligence was the proximate cause of the damage to the Nobles' property totalling $20,000. The district court granted leave to amend the petition.

Colonial also resisted the motion for summary judgment. It claimed it was seeking to recover for medical bills, expenses, and lost wages suffered by the Nobles. Colonial believed these damages were economic in nature, and therefore, it was seeking recovery for property damages which would come within the five-year statute of limitations in section 614.1(4).

The district court granted the motion for summary judgment. The court found that as a result of the settlement agreement with the Nobles, Colonial was not entitled

to pursue any claims against Ervin other than those relating to personal injuries suffered by the Nobles. The court determined these claims were barred by the two-year statute of limitations. The court concluded sanctions were not appropriate because Ervin had not shown any violation of rule 80(a).

Colonial appealed and Ervin cross-appealed.

I. Colonial claims the district court should not have granted Ervin's motion for summary judgment. It states it was entitled to pursue all economic losses for which it compensated its insured. Colonial states these economic losses included medical expenses, lost wages, and out-of-pocket costs, which are actually property damages. It believes there is a genuine issue of material fact concerning whether these items constitute property damage within the purview of section 614.1(4).

Under Iowa Rule of Civil Procedure 237, summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. On appeal of a summary judgment ruling, we must decide whether a genuine issue of material fact exists and if the law was correctly applied. *Ottumwa Housing Authority v. State Farm Fire & Casualty Co.*, 495 N.W.2d 723, 726 (Iowa 1993).

The party moving for summary judgment has the burden of showing the nonexistence of a genuine issue of material fact. *Hofco, Inc. v. National Union Fire Ins. Co.*, 482 N.W.2d 397, 400 (Iowa 1992). The resisting party should be afforded

every legitimate inference that can reasonably be deduced from the evidence. *Id.* A fact question is generated if reasonable minds could differ on how the issue should be resolved. *Hoefer v. Wisconsin Educ. Ass'n Trust*, 470 N.W.2d 336, 338 (Iowa 1991).

We agree with the district court's conclusion that summary judgment was appropriate in this case. We find the settlement agreement between Colonial and the Nobles granted Colonial subrogation rights only as to the Nobles' personal injury claims. Under the terms of the agreement, the Nobles kept their right to pursue any property damage claims against Ervin.

Because the only subrogation claims which Colonial may raise are those based on personal injury, the two-year statute of limitations found in section 614.1(2) applies. Colonial's action against Ervin was filed more than two years after the accident which gave rise to the claims. Thus, Colonial's action is barred by the statute of limitations and Ervin is entitled to summary judgment.

II. In his cross-appeal, Ervin claims the district court abused its discretion by not imposing sanctions against Colonial. He believes that either Colonial purposefully used the word "vehicle" in its original petition in an attempt to avoid the statute of limitations, or its attorney failed to investigate the case before filing the petition. In either case, Ervin believes Colonial violated rule 80(a) and should be subjected to sanctions.

We apply an abuse of discretion standard in our review of the trial court's order on a motion for sanctions. *State ex rel. Iowa Department of Human Services v. Duckert*, 465 N.W.2d 871, 874 (Iowa 1991). We must determine whether the court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id.* "Unreasonable" in this context means not based on substantial evidence. *Schettler v. Iowa District Court*, 509 N.W.2d 459, 464 (Iowa 1993).

Rule 80(a) requires the signer to certify that: (1) the signer has read the petition; (2) the signer has concluded after reasonable inquiry into the facts and law that there is adequate support for the filing; and (3) the signer is acting without any improper motive. *Weigel v. Weigel*, 467 N.W.2d 277, 280 (Iowa 1991). Compliance is judged by an objective standard of reasonableness under the circumstances. *Schettler*, 509 N.W.2d at 466.

We find no abuse of discretion in the district court's conclusion that there was an insufficient showing Colonial had violated rule 80(a). We affirm the district court's conclusion that sanctions were not appropriate in this case. Additionally, we deny Ervin's request for appellate attorney fees as a sanction against Colonial.

We affirm the district court on the appeal and cross-appeal. Costs of this appeal are assessed one-half to each party.

AFFIRMED.