FILED
SEP 6 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

210

JEAN C. SABLE,	)	Filed September 6, 1984
Plaintiff-Appellant,	)	
vs.	)	4-234 83-1467
HORACE MANN LIFE INSURANCE COMPANY,	)	
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Scott County, Linda K. Neuman, Judge.

Petitioner appeals from grant of summary judgment for respondent in an action to recover under an insurance contract. REVERSED AND REMANDED.

Kenneth D. Benhart of Flagg, Hockett, Benhart, Bertogli & Jennett, Des Moines, for plaintiff-appellant.

Charles W. Brooke of Lane & Waterman, Davenport, for defendant-appellee.

Considered by Oxberger, C.J., Donielson, and Schlegel, JJ.

OXBERGER, C.J.

Petitioner appeals from a grant of summary judgment in favor of respondent, stating the trial court erred in its interpretation of the statute of limitations applicable to an insurance contract.

The petitioner, Jean C. Sable, was insured by respondent, Horace Mann Life Insurance Company, under a contract while employed by Perry Community Schools. In 1973 she contracted multiple sclerosis and was paid benefits by the company until 1976, when her disease entered remission. She reapplied for benefits in December 1978, which the company denied in a letter dated February 27, 1979, on grounds that the policy with the school was terminated in 1975. Suit was brought by petitioner in February 1983, claiming her disability was continuing in nature and covered by the policy. The insurance company moved for summary judgment, claiming Chapter 514A applied and its statute of limitations had run. Petitioner said the ten-year statute of limitations at section 614.1(5) of the code applied. The trial court agreed with respondent. We reverse and remand.

I. Scope of Review

Iowa courts recognize that in reviewing summary judgment the facts in the pleadings and inferences from them are viewed in the light most favorable to the party resisting the motion. Meylor v. Brown, 281 N.W.2d 639 (Iowa 1979). The key question is whether a genuine issue of material fact exists and, if there is none, to decide if the movant should prevail as a matter of law. Id.; Frohwein v. Haesemeyer, 264 N.W.2d 792 (Iowa 1978). The burden is on the movant to prove no material fact exists and that as a matter of law he or she is entitled to judgment. Anita Valley, Inc. v. Bengley, 279 N.W.2d 37 (Iowa 1979).

II. Issues

Respondent has argued on appeal that petitioner has not properly preserved the issues presented. The issue regarding the applicability of chapter 514A was

raised by respondent before the trial court, not petitioner. Further, the issue regarding the general statute of limitations was presented by petitioner to the trial court in its resistance to the motion for summary judgment. While the trial court rested its decision on chapter 514A, if other issues regarding summary judgment were presented to the trial court they are within our scope of review. These matters may be heard on appeal even though the arguments were ignored or rejected by the trial court. Geil v. Babb, 214 Iowa 263, 242 N.W. 34 (1932); 5 C.J.S. Appeal and Error § 1464(1)(1942).

The sole issue presented on review is whether chapter 514A, the insurance policy, or the general statute of limitations applied. Section 514A.(1)(g) indicates written proof of loss is required to be furnished:

> [I]n case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(emphasis added).

The insurance policy provisions applicable between the company and Jean Sable are identical to the above provisions, with the important exception that proof of loss is required after the commencement, rather than termination, of the period for which the insurer is liable.

The insurer in its motion for summary judgment stated the above code section barred petitioner's action. Apparently, insurer did not realize, as petitioner points out on appeal, that chapter 514A provides for the running of the statute of limitation from the termination rather than commencement of the

period insurer is liable. If the period insurer is liable is accepted as including all the time insured is currently disabled, the period has not yet terminated since she is still disabled. The statute of limitations has not yet begun to run under this theory. Petitioner further points out the following provisions of chapter 514A.4:

> 1. Other policy provisions. No policy provision which is not subject to section 514A.3 shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.
>
> 2. Policy conflicting with this chapter. A policy delivered or issued for delivery to any person in this state in violation of this chapter shall be held valid but shall be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with any provision of this chapter, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this chapter.

Insured claims this means the provisions more favorable to her in the statute prevail and that proof of loss was not required until the termination of the period for which the company is liable.

Insurer has retreated from its original contention that chapter 514A is operative and says the statute cannot apply to this insurance policy because of section 514A.8 which states "[N]othing in this chapter shall apply to or affect... any blanket or group policy of insurance." Insurer says this is a group policy and because chapter 514A does not apply, we must look to the more restrictive provisions of the policy itself. Since the contract indicates the three-year statute of limitations runs from the commencement of her disability, her action, respondent claims, is barred.

Petitioner has countered that the insurance policy is not a group policy, and chapter 514A should apply. She argues in the alternative that the insurance policy provision is unconscionable, and the general statute of limitations regarding written contracts found at section 614.1(5) applies. Its ten-year statute of limitations would not bar her action.

Therefore, the questions presented in determining if the action is barred and summary judgment was proper are (1) if chapter 514A applies and (2) if it does not, whether the insurance policy limit or section 614.1(5) statute of limitations apply.

1. Does Chapter 514A apply?

The two sections of chapter 514A, specifically 514A.4(1) and 514A.8, appear to conflict. The former indicates no policy inconsistent with the provision of the chapter is allow to work against the insured. The latter would appear to take all group policies out of the statute.

Where sections in the code are within a chapter devoted to one subject, they should be construed so that neither are negated. State v. Corning State Savings Bank, 139 Iowa 338, 115 N.W. 937 (1909). The provisions should be construed so that each is effective and all parts harmonious. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980). Specific language of a statute will control its more general provisions. In re Brown, 329 F. Supp. 422 (S.D. Iowa 1971).

In a case involving similar problems of interpretation, the court was faced with one provision of the code which gave a broader time limit for filing proofs of loss than the policy in question, and specifically negated insurance policy provisions to the contrary. Peters v. United Commercial Travelers, 203 Iowa 428, 212 N.W. 576 (1927). Yet another chapter indicated fraternal beneficiary societies and mutual associations were exempted from all other provisions and governed by that chapter only. Id. at 429. The court determined such associations were exempt and since no limits were imposed in the applicable chapter, the more restrictive insurance policy provisions prevailed. Id. at 430.

Interpretation of two inconsistent provisions of the code was resolved differently in Bradford v. Mutual Fire Insurance Co., 112 Iowa 495, 84 N.W. 693 (1900). One section claimed to exempt all companies organized under it from any other part of the insurance code, while a second purported to impose a statute of

limitations on all insurance policies. Id. at 501. The latter prevailed, because of its broad language, and because the general statute of limitations was enacted after the specific exemption Id.

In this instance one section appears to indicate no policy provision more restrictive is allowed. However, in section 514A.4(2) the statute is limited to provisions "in a policy subject to this chapter. . ." (emphasis added). If section 514A.8 is to be given its logical meaning in connection with section 514A.4 then "[N]othing in this chapter," including section 514A.4, is to apply to group policies. Unlike the section of the code involved in Bradford, these sections were enacted at the same time. As the court in Peters found, we also find group insurance policies are not affected by chapter 514A.

Petitioner claims the Perry school policy is not a group policy, noting the numerous references to "individuals" in the policy provisions. This alone is not conclusive. On the contrary, insured's petition and resistance to motion for summary judgment refer to the policy as "long-term group disability insurance coverage," the policy itself is caption as a group insurance policy, the certificate of insurance shows the group insurance policy is issued to Perry Community Schools, and both insured's application for insurance and claim for benefits indicate it is a group policy. Since the insurance is a group policy, it does not fall within the provisions of chapter 514A.

2. Does the insurance policy bar recovery, or does section 614.1(5) apply?

Respondent says that since petitioner's action was not brought by February 1982, three years after her claim was denied, it is barred by the contract. Generally, insurance contract limits are valid unless they are contrary to statutory limits. Kiisel v. Mutual Reserve Life Insurance Company, 131 Iowa 54, 107 N.W. 1027 (1906). However, they will not be upheld if they are unreasonable. Cook v. Heinbaugh, 202 Iowa 1002, 210 N.W. 129 (1926); 46 C.J.S. Insurance § 1256

(Supp. 1942). No limits are statutorily imposed on such provisions regarding group policies. See Iowa Code § 509.3 (1983). The insurance policy limit is not statutorily barred, but it must be remembered that a statute of limitations defense is not favored by the court. Johnson v. Brooks, 254 N.W.Iowa 278, 117 N.W.2d 457 (1962); 46 C.J.S. Insurance § 1256 (Supp. 1984).

Petitioner argues that the contract is unconscionable. The Iowa Supreme Court has explained its position at length on this area as it relates to insurance contracts in C & J Fertilizer, Inc. v. Allied Mutual Insurance Co., 227 N.W.2d 169 (Iowa 1975); Annot. 86 A.L.R. 3d 839 (1973). In that case a standard contract contained a clause excepting the insured from coverage. Id. The court reviewed the pertinent law and scholarly thought and labeled the policy an adhesion contract. Id. at 174. It noted most insureds do not read the form contracts handed to them, would not understand it if they did, and are in no position to bargain with the insurance company. Id. at 174, 175. The reasonable expectations of insured ought to be protected in such circumstances. Id. at 176. The courts do not act as guardian for persons entering contracts. Short v. Martin, 255 Iowa 189, 121 N.W.2d 154 (1963). However, in the circumstances outlined, at C & J Fertilizer, judicial intervention is appropriate. C & J Fertilizer, Inc. v. Allied Mutual Insurance Co., 227 N.W.2d at 175.

The insurance policy in question here nearly exactly duplicates the provisions of section 514A.3(1)(k), leading a person to believe it is the same. It changes one word, around which this litigation centers. Petitioner also points out it is possible under respondent's interpretation of the provisions that the company could pay benefits for three years from the commencement of the liability period, then abruptly halt payments, using the insurance policy statute of limitations as a defense. The public policy reflected in chapter 514A regarding accident and

sickness policies also shows disfavor of such provisions. We conclude the provision is unconscionable and should be excluded from the insurance contract. We agree with the trial court that petitioner's action is not founded on personal injury claims. See Rodgers v. Pennsylvania Life Insurance Co., 539 F. Supp. 879 (S.D. Iowa 1982). The statute of limitations relevant to the action is the general statute found at section 614.1(5) regarding written contracts. The five-year statute of limitations at section 614.1(4) applies to her claims of injury to property rights. Because the limit has not expired, the action is not barred.

Since we have determined the statute of limitations does not bar the action, material facts remain to be decided by the trial court regarding the substance of petitioner's claim. For these reasons we reverse summary judgment and remand to the trial court.

REVERSED AND REMANDED.