FILED
JAN 29 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-331 / 91-293

RAY O. GUTKNECHT, KARON A. GUTKNECHT and TROY GUTKNECHT, By His Next Friend, RAY O. GUTKNECHT,

Appellees,

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vs.

FARM AND CITY INSURANCE COMPANY,

Appellants.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Defendant appeals the decision of the district court following remand. **AFFIRMED IN PART AND REVERSED IN PART.**

R. Allen Corzine of Pieters, Pieters & Corzine, Waterloo, for appellant.

W. H. Gilliam, Waterloo, for appellee.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, P.J.

Ray and Karon Gutknecht and their son, Troy, were involved in an automobile accident on March 31, 1984. Only Karon was seriously injured. The other driver, Lori Christensen, was intoxicated and carried no automobile insurance.

The Gutknechts brought suit against Christensen and the three bars that sold alcohol to Christensen. A settlement was reached with the three bars on September 29, 1986, for $27,000. $500 of this amount was for Troy's loss of consortium claim. Ray and Karon received $26,500 in an undivided share. The Gutknechts signed a release which waived their rights against the three bars. No judgment was taken against Christensen because she had filed for bankruptcy.

The Gutknechts then filed the present suit against their automobile insurance carrier, Farm and City Insurance Company (FCIC), based on an uninsured motorist provision. The district court entered judgment in favor of Karon for $20,000, the full limit of the policy.

FCIC appealed. In an unpublished opinion we reversed and remanded. We determined that the Gutknechts' insurance policy served only to insure a minimum recovery of $20,000 for an accident with an uninsured driver. We ordered that the insurance proceeds due Karon should be offset by her recovery from the settlement. However, because Karon and Ray received an undivided share of $26,500, we remanded to

the district court to allow it to allocate the settlement proceeds between Karon and Ray.

On remand, the district court allocated $13,250 to Karon and the same amount to Ray. Karon was then entitled to $7,750 under the terms of the insurance policy. The district court additionally ordered FCIC to pay 49.08% of the Gutknechts' attorney fees, or $8,833.33, and $557 in costs. The court entered judgment against FCIC for $12,358.78. FCIC has appealed.

This case was heard at law. Our review is for correction of errors at law. Iowa R. App. P. 4. The district court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). However, we are not bound by an erroneous application of the law. Davis v. Hansen, 224 N.W.2d 4, 5 (Iowa 1974).

FCIC contends that the district court exceeded the authority it was granted for the remand by awarding the Gutknechts attorney fees and costs. FCIC claims the Gutknechts are not entitled to attorney fees and that this issue was raised for the first time at the remand hearing.

Generally, an appellate court decision becomes the law of the case and is controlling on the trial court and on any further appeals in the same case. Springer v. Weeks & Leo Co., Inc., 475 N.W.2d 630, 632 (Iowa 1991). Furthermore, it is well settled in Iowa that when a appellate court remands for a special purpose, the district

court upon the remand, is limited to do the special thing authorized by the appellate opinion and nothing else. Kuhlmann v. Persinger, 261 Iowa 461, 468, 154 N.W.2d 860, 864 (1967).

We hold that the district court did not have authority at the remand hearing to determine additional issues not presented on appeal. We have consistently held questions not presented to and not passed upon by the trial court cannot be raised and reviewed on appeal. Foods, Inc. v. Leffler, 240 N.W.2d 914, 920 (Iowa 1976). It must also then be the case that questions which have not been raised on appeal may not be raised for the first time at a remand hearing.

We reverse the portion of the district court judgment which was awarded for attorney fees and costs. We affirm the judgment against FCIC for $7,750, plus interest of ten percent per annum from the date this opinion is filed. Costs are assessed to the Gutknechts.

AFFIRMED IN PART AND REVERSED IN PART.