FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-178 / 89-1363

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WILLIAM JAMES ADAMS,

Appellant,

vs.

GRINNELL MUTUAL REINSURANCE COMPANY,

Appellee.

Appeal from the Iowa District Court for Clay County, Tom Hamilton, Judge.

Plaintiff appeals a district court's decision sustaining Grinnell Mutual's motion for summary judgment. **AFFIRMED.**

Bradley Howe of Sackett, Sackett & Howe, P.C., Spencer, for appellant.

Alan E. Fredregill and John C. Gray of Eidsmoe, Heidman, Redmond, Fredregill, Patterson & Schatz, Sioux City, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ. Sackett, J., takes no part.

OXBERGER, C.J. 12

William and Richard Adams are brothers who conduct farm operations near each other. They have exchanged labor for many years. Each brother maintained a farm liability insurance policy on his respective farm. Neither brother employs the other.

On October 31, 1985, William was injured while doing exchange labor at Richard's farm. At the time of the accident, Richard owned a farm liability policy in force from Grinnell Mutual Reinsurance Company. Pursuant to the terms of the policy, Grinnell paid William's medical expenses for one year.

William sued his brother, Richard, alleging Richard's negligence caused the accident. William later added Grinnell as a defendant alleging Grinnell breached its insurance policy with Richard by refusing to pay William's medical bills after one year and denying compensation for William's disability and future medical expenses. William argued he was a third-party beneficiary of Richard's policy with Grinnell.

A court order severed the suit against Grinnell from the suit against Richard. Grinnell filed a motion for summary judgment stating that no coverage exists. The court sustained Grinnell's motion for summary judgment. The suit against Richard remained pending when the court granted Grinnell's motion. William appeals.

William contends that the district court erred by granting the motion for summary judgment because Richard intended William to benefit from Richard's insurance policy with Grinnell. William also claims that he is a creditor beneficiary. William further claims Richard reasonably expected full coverage for exchange labor victims.

In response, Grinnell asserts Iowa Code section 516.1 bars William's claim because the claim will not accrue until a judgment returns unsatisfied after execution. Grinnell claims that even if William was an intended beneficiary, no provision in the policy existed to pay medical expenses for more than one year. Grinnell further alleges that the doctrine of reasonable expectations does not apply to attempts to add coverage. Grinnell also states that no claim can be based upon any agreement between Richard and his insurance broker as to coverage because: 1) it is barred by the statute of limitations; 2) William never raised the issue below; and 3) the carrier cannot be sued for the broker's agreement. Iowa Code § 85.1(3)(2).

We review this case for correction of errors at law. Iowa R. App. P. 4. In Knapp v. Simmons, 345 N.W.2d 118,121 (Iowa 1984), the Court discussed summary judgment proceedings stating:

> Summary judgment is proper when there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The burden of showing the nonexistence of a material fact is upon the moving

> party. While an adverse party generally cannot rest upon his pleadings when the moving party has supported his motion, summary judgment is still not proper if reasonable minds could draw different inferences and conclusions from the undisputed facts. In this respect, summary judgment is functionally akin to a directed verdict; every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved. (citations omitted)

Iowa's direct action statute allows an injured person the right to proceed against the insurer of the person who injured him after obtaining a judgment and having that judgment returned unsatisfied after execution. Iowa Code § 516.1 (1989). This right does not accrue until after judgment is obtained and execution returned unsatisfied. Farm and City Insurance Co. v. Coover, 225 N.W.2d 335, 337 (Iowa 1975)(citing McCann v. Iowa Mutual Liability Ins. Co., 231 Iowa 509, 1 N.W.2d 682(1942)).

We agree with the district court that William filed suit against Grinnell before the direct action statute allows him to do so. The district court correctly dismissed William's petition without prejudice.

We also agree with the district court that testimony in the depositions fail to support the third-party beneficiary claim urged by William. In order for a third-party beneficiary to enforce a contract he must show that the contract was made for his express benefit. Unless a third-party beneficiary sustains the burden of showing that a provision was for his direct benefit, he cannot sue on the agreement. Khabbaz v. Swartz, 319 N.W.2d 279, 285 (Iowa 1982)(authorities omitted).

William's claim fails because he did not sustain his burden of showing that his brother Richard purchased the liability insurance contract expressly for his benefit. Richard's statements in his deposition only stand for the proposition that he purchased the insurance so that anyone injured while helping him on his farm would be compensated for needed medical treatment. William's claim is not analogous to the third-party beneficiary claim in Bridgeman v. Curry, 398 N.W.2d 167 (Iowa 1986), because in Bridgeman, the plaintiffs showed themselves to be third-party beneficiaries because their installment contract with Curry to sell their farm was specifically referenced in a contract between Curry and third-parties to invest in real estate. In William's case no specific reference is made to William in the insurance contract between Richard and Grinnell which protects any person injured on Richard's farm, subject to limitations.

Since William lacks any right of action against Grinnell on the insurance contract between Richard and Grinnell before a judgment is entered and execution returned unsatisfied in his law suit against Richard, we need not address William's claim that Richard did not receive the protection he expected from Grinnell.

We find no merit in William's other claims against Grinnell and therefore affirm the district court's order granting summary judgment in favor of Grinnell.

AFFIRMED.