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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

489

GREGG A. TALLMAN,	)	
Plaintiff-Appellant,	)	Filed March 23, 1988
vs.	)	
DENNIS HANSSEN and WAUSAU INSURANCE COMPANY,	)	7-493 87-182
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Polk County (67-39419), Peter A. Keller, Judge.

Plaintiff appeals from the district court ruling which dismissed his petition for failure to state a claim and sustained the insurance carrier's special appearance based upon a lack of subject matter jurisdiction. **AFFIRMED.**

Gregg A. Tallman, Des Moines, pro se.

Thomas J. Logan of Hopkins & Huebner, Des Moines, for defendants-appellees.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Plaintiff, Gregg Tallman, appeals the ruling of the district court dismissing his petition against defendant, Dennis Hanssen, for failure to state a claim upon which relief could be granted, and sustaining the special appearance of defendant, Wausau Insurance Company (Wausau), on the basis of lack of subject matter jurisdiction.

In his petition, filed August 13, 1986, Mr. Tallman alleged Mr. Hanssen maliciously libeled his character and defamed his business reputation in a brief Mr. Hanssen submitted to the Iowa Industrial Commission as attorney for Wausau. Wausau was the workers' compensation insurer for Mr. Tallman's former employer, the American Can Company. Mr. Tallman also alleged Wausau deliberately violated his rights under Iowa Code chapter 85 (Workers' Compensation Act) by refusing to pay medical bills causally connected to his work-related injury and by refusing to provide him a physician. Mr. Tallman contended this alleged violation caused him physical damage, and extreme pain and mental anguish.

The district court dismissed Mr. Tallman's claim against Mr. Hanssen, concluding that Mr. Hanssen had an absolute privilege to publish false and defamatory matter during the course of Mr. Tallman's workers' compensation proceeding. The district court also concluded it lacked subject matter jurisdiction over Mr. Tallman's claim against Wausau and, therefore, sustained Wausau's special appearance. This appeal followed. Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

I. Libel Claim. As noted in Robinson v. Home Fire & Marine Ins. Co., 242 Iowa 1120, 49 N.W.2d 521 (1951):

> An attorney at law is absolutely privileged to publish false and defamatory matter of another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of a judicial proceeding in which he participates as counsel, if it has some relation thereto.

Id. at 1127, 49 N.W.2d at 525. A "judicial proceeding," as contemplated by this rule, is defined as "one carried on in a court of justice established or recognized by law, wherein the rights of parties which are recognized and protected by law are involved and may be determined." Mills v. Denny, 245 Iowa 584, 590, 63 N.W.2d 222, 226 (1954) (holding that the legislative delegated power given a city council did not confer upon it judicial or quasi-judicial power).

We determine a workers' compensation proceeding falls within this definition of "judicial proceeding," therefore, the absolute privilege applies in this case. This determination is consistent with the purpose of the absolute privilege, which is to encourage the open resolution of disputes by eliminating the possibility of later civil suits, such as the case at bar, from statements made in judicial proceedings. See Beeck v. Kapalis, 302 N.W.2d 90, 97 (Iowa 1981). We conclude the dismissal of Mr. Tallman's libel claim was not error. See Mills v. Denny, 245 Iowa at 589, 63 N.W.2d at 225; see also, Johnston v. Cartwright, 355 F.2d 32, 36 (8th Cir. 1966).

II. Workers' Compensation Rights Violation. Mr. Tallman also alleged Wausau deliberately violated his rights under Iowa Code chapter 85. Mr. Tallman contended Wausau refused to pay his medical bills and refused to provide him a physician.

Under Iowa law Mr. Tallman's rights and remedies on account of his work-related injury are provided for exclusively under Iowa Code chapter 85. Iowa Code § 85.20; Steffens v. Proehl, 171 N.W.2d 297, 300 (Iowa 1969). Thus, the district court has no jurisdiction of the subject matter of such cases. Steffens, 171 N.W.2d at 300. Similarly, the district court does not have original jurisdiction over cases involving delays in payment or termination of payments. See Iowa Code § 86.13 ("If a delay in commencement or termination of benefits occurs

without reasonable or probable cause or excuse, the industrial commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied."); Iowa Code § 86.14 (regarding proceedings to reopen an award for payments); but see Coleman v. American Universal Ins. Co., 86 Wis.2d 615, 620, 273 N.W.2d 220, 221 (1979).

We conclude the district court did not err by sustaining Wausau's special appearance on the basis of lack of subject matter jurisdiction. Mr. Tallman should have brought this claim before the Industrial Commissioner and not the district court.

AFFIRMED.

Oxberger, C.J., concurs in part and dissents in part; Sackett, J., concurs in part and dissents in part.

OXBERGER, C.J. (concurring in part and dissenting in part) 193

I concur in Division I of the majority opinion. I dissent from Division II.

I would hold that where a workers' compensation insurer acts in bad faith in the settlement or payment of compensation benefits, a separate tort is committed that is not within the purview of the exclusivity provisions of the workers' compensation law and that the separate tort of bad faith may be alleged and proved in the courts. Accord In re Certification of a Question of Law, 399 N.W.2d 320, 324 (S.D. 1987); Coleman v. American Universal Ins. Co., 273 N.W.2d 220, 221 (Wis. 1979). Consequently, I would find the district court had subject matter jurisdiction over plaintiff's claim.

I would reverse the district court's judgment and remand for further proceedings.

SACKETT, J. (concurring in part and dissenting in part)

I concur in Division II of the majority's opinion. I dissent from Division I.

Dismissal of a petition under Iowa Rule of Civil Procedure 104(b) is appropriate only if plaintiff has failed to state a claim upon which any relief could be granted under any state of supporting facts that could be established. Schreiner v. Scoville, 410 N.W.2d 679, 680 (Iowa 1987). Plaintiff makes broad allegations of libel and defamation. It is not clear from the record, at this stage, whether the statements at issue in Hanssen's brief and any relation to the workers' compensation proceeding. See Robinson v. Home Fire & Marine Ins. Co., 242 Iowa 1120, 1129, 49 N.W.2d 521, 526 (1951). Defendant Hanssen's contentions would better be addressed in a hearing on a motion for summary judgment.