IN THE COURT OF APPEALS OF IOWA

No. 1-168 / 00-0600
Filed October 24, 2001

FILED
OCT 2 4 2001
CLERK SUPREME COURT

LUMBERMEN'S UNDERWRITING ALLIANCE,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR BLACK HAWK COUNTY,
Defendant.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Plaintiff in this certiorari action contends the district court erred by denying its motion for sanctions against the party who brought suit against it for bad faith failure to settle a workers' compensation claim. **WRIT SUSTAINED.**

James A. Pugh of Morain, Burlingame & Pugh, P.L.C., West Des Moines, for plaintiff.

Ruth M. Carter of Carter Law Firm, P.C., for plaintiff in proceedings below.

Considered by Sackett, C.J. and Zimmer and Miller, JJ.

PER CURIAM

In this certiorari action Lumbermen's, a workers' compensation insurance carrier, claims the district court erred in not imposing Iowa Rule of Civil Procedure 80 sanctions against the attorney representing a workers' compensation claimant for filing a frivolous bad faith suit. Lumbermen's asks for attorney fees and costs for defending the suit and for prosecuting this writ action. Plaintiff also seeks to have the claimant's voluntary dismissal of the suit deemed to be with prejudice. We sustain the writ.

Background facts and proceedings

Claimant Joseph Sheppard filed a workers' compensation claim in August 1998, alleging his eye was injured at work on July 9, 1998. When Sheppard first visited his doctor in July 1998, about his eye injury, he stated it was not work related. Letters from subsequent treating physicians suggested the eye lesion was due to abuse of anesthetic eye drops. Lumbermen's denied the claim.

In November 1998, Sheppard filed a suit in district court claiming Lumbermen's acted in bad faith in denying his claim. After filing its answer, Lumbermen's wrote to Sheppard's attorney, claiming the suit was frivolous and threatening to seek sanctions if it were not dismissed.

Following extensive discovery, in October 1999 Lumbermen's filed a motion for summary judgment in the bad faith action. Sheppard dismissed the case without prejudice ten days later, but stated he intended to re-file after a decision was made in the workers' compensation arbitration proceeding. In February 2000, an arbitration decision determined Sheppard sustained an injury on July 9, 1998 which

would have healed within five days but for his abuse of topical anesthetics. He was awarded his medical expenses from July 9 through 14.

Sanction proceedings

Lumbermen's then filed a motion for sanctions under rule 80, asking for attorney fees and a dismissal with prejudice. The district court denied the motion. The court ruled,

> The Court, in reviewing the file, arguments of counsel, and a reading of the Plaintiff's deposition, determines that there was a reasonable basis for denying the Plaintiff's claim. However, the Court does not find that the filing of the bad faith claim by the Plaintiff is such that Rule 80 sanctions should be imposed. The Court determines that a reasonable person could determine that there was a legitimate claim by the Plaintiff when this matter was filed.

Lumbermen's filed a rule 179(b) motion, asking if the court found "that a reasonable investigation would allow a legitimate conclusion that [Lumbermen's] had no reasonable basis to deny [Sheppard's] claim." In its ruling on the 179(b) motion, the court found "that an investigation would allow a legitimate conclusion that [Lumbermen's] had sufficient reason to deny [Sheppard's] worker's compensation claim." The court also determined "that [Sheppard] had a legitimate claim for worker's compensation and potentially a legitimate claim on their belief that bad faith was exercised by [Lumbermen's]."

Claims on appeal

Lumbermen's claims the district court acted illegally and in excess of its jurisdiction when it failed to grant rule 80(a) sanctions. It argues Sheppard failed to prove the elements of bad faith and a legitimate investigation by him would have revealed a reasonable basis for Lumbermen's denial of the claim.

Sheppard responds claiming Lumbermen's counsel's actions warranted sanctions but,

> [i]t has been with great reluctance, owing substantially to balancing the interests of many clients and using common sense judgments about time prioritization, that Sheppard's attorney has restrained himself from filing Rule 80 counter-motions, and from seeking sanctions, beyond costs and fees against Plaintiff and its attorney [on appeal].

Analysis.

Review of a district court's rule 80 sanction decision is for an abuse of discretion. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989).

Rule 80 sanctions. The Iowa Supreme Court has stated,

> Using the deferential standard of review, we examine the record as to the prefiling inquiry of counsel. Under our statute and rule an attorney must conduct a reasonable inquiry as to the facts and the law before the petition is signed and filed. Compliance is measured by an objective, not subjective, standard of reasonableness under the circumstances. Our rule and statute make sanctions mandatory when a violation occurs, but whether a violation has occurred is a matter for the court to determine, and this involves matters of judgment and degree.

Id. at 445-46. "The test is whether a reasonable attorney would have brought suit if confronted with the same circumstances." *Fields v. Iowa Dist. Court for Polk County*, 468 N.W.2d 38, 39 (Iowa 1991).

Lumbermen's argues that, because it had a reasonable basis for denying Sheppard's claim, the bad-faith suit should not have been filed and sanctions were appropriate. Lumbermen's contends Sheppard's attorney knew or should have known the bases for Lumbermen's refusal to pay the claim.

In order to prevail in a bad faith claim, Sheppard had to prove (1) the absence of a reasonable basis for denying the claim, and (2) that the defendant knew or had reason to know that its denial was without a reasonable basis. *Thompson v. United*

Sstates Fidelity and Guar. Co., 559 N.W.2d 288, 291 (Iowa 1997). The district court determined "a reasonable person could determine there was a legitimate claim by [Sheppard] when this matter was filed." Sheppard eventually demonstrated he had a legitimate claim for limited medical treatment of his work-related injury. At the time he filed the bad faith suit, however, he did not have a legitimate claim that Lumbermen's acted in bad faith. Sheppard told one doctor and at least two co-employees his injury was not work related. The treating physicians opined the injury was from abuse of topical anesthetic eye drops. Lumbermen's had an objectively reasonable basis for denying the claim. Given the knowledge Sheppard's counsel had available to him prior to filing the suit, we conclude a reasonable attorney would not have filed suit under those circumstances.

We conclude the district court abused its discretion in not imposing rule 80 sanctions. We sustain the writ of certiorari and remand this matter to the district court for the determination and imposition of appropriate sanctions as mandated by rule 80.

WRIT SUSTAINED.