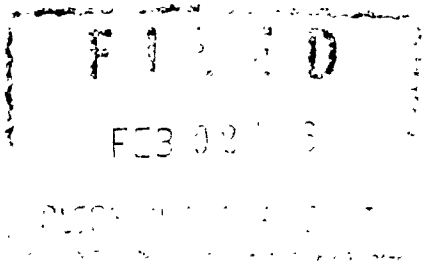
IN THE COURT OF APPEALS OF IOWA

No. 5-686 / 95-0806



RICHARD L. TAYLOR, JR.

Appellant.

vs

GEICO GENERAL INSURANCE COMPANY,

Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith III, Judge.

Taylor appeals the district court ruling dismissing his action seeking damages under the insurer's uninsurance coverage for injuries Taylor sustained during an assault by a participant in a motor vehicle accident involving Taylor. **AFFIRMED.**

Richard D. Crotty, Council Bluffs, for appellant.

Ronald L. Comes and Michael G. Mullen of McGrath, North, Mullin & Kratz, Omaha, Nebraska, for appellee.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

HUITINK, J.

Richard Taylor appeals the district court ruling dismissing his action seeking damages under defendant Geico's uninsurance coverage. We affirm.

On October 22, 1994, Taylor was driving his car on South 24th Street in Council Bluffs when he negligently struck a vehicle owned and operated by Douglas A. Anderson. Immediately after the collision Anderson got out of his vehicle and proceeded to assault Taylor, causing him injuries and damages. Taylor's injuries were caused solely by the assault, and he does not claim any physical harm as a direct result of the collision. Taylor and Anderson did not know each other before the collision.

Taylor had motor vehicle insurance with Geico General Insurance Company. His policy, which was written and executed in Nebraska, included the following uninsured motorist provision:

> Under the Uninsured Motorist Coverage we will pay damages for bodily injury caused by accident which the insured is legally entitled to recover from the owner or operator of an uninsured auto or hit and run auto arising out of the ownership, maintenance or use of that auto.

Taylor sought damages for his injuries under this provision. Taylor alleged that his injuries, though not the direct result of the collision, were caused by the accident. Geico denied Taylor's claim. Taylor subsequently initiated this action against Geico asking the court to award damages and attorney's fees pursuant to Nebraska law.

Geico filed a motion to dismiss claiming Taylor's injuries from the assault following the accident did not arise out of the ownership, maintenance, or use of

Anderson's vehicle and that, as a result, the uninsured motorist provision did not apply. Geico also claimed the injuries were not caused by the accident, were not caused by the accident between vehicles, and Anderson's vehicle was neither an "uninsured auto" nor a "hit and run auto" as required by the policy.

After a hearing, the district court granted Geico's motion. The court concluded that under Nebraska law, Taylor's injuries did not arise from the "ownership, maintenance or use" of Anderson's allegedly uninsured auto. As a result, the district court found Taylor's injuries were outside the scope of the uninsured motorist provision. Taylor appeals.

Our review is for correction of errors of law. Iowa R. App. P. 4. Under Iowa Rule of Civil Procedure 104(b) a motion to dismiss is sustainable only when the pleadings make certain the pleader has failed to state a claim on which any relief can be granted under any state of facts provable under the allegations. *Brumage v. Woodsmall*, 444 N.W.2d 68, 68-69 (Iowa 1989). A motion to dismiss admits the well-pleaded facts in the petition and waives any ambiguity or uncertainty. *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994). We view the allegations in the petition in the light most favorable to the plaintiff. *Id.*

Taylor claims the district court erred by granting Geico's motion to dismiss. He asserts his injuries were "caused by an accident" within the meaning of the uninsured motorist provision of his insurance policy. He claims that as a result of this

accident, he is entitled to damages pursuant to Iowa Code section 516A.1 and the terms of the policy. He claims it was error for the district court to determine the uninsured motorist provision did not as a matter of law include coverage for injuries sustained as a result of a postcollision assault. We disagree.

As a preliminary matter we determine, as did the district court, that Nebraska law governs this dispute. The insurance policy was both written and issued in Nebraska, and Taylor is a Nebraska resident. Moreover, we agree with the district court that Nebraska has the most significant relationship to the case and has a substantial interest in the resolution of the controversy. *Cf. Cameron v. Hardisty*, 407 N.W.2d 595, 597 (Iowa 1987). (Iowa law, rather than Nebraska law, applied to negligence action brought in Iowa arising from automobile accident between Minnesota resident and Iowa resident which occurred in Nebraska).

Under Nebraska law, an insurance policy is to be construed as any other contract to give effect to the parties' intentions at the time the contract was made. *Katskee v. Blue Cross/Blue Shield*, 245 Neb. 808, 812-13, 515 N.W.2d 645, 649 (1994). When the terms of the contract are clear, a court may not resort to rules of construction, and the terms are to be given their plain and ordinary meaning. *Id.* Accordingly, in such a case, the court must ascertain the intention of the parties from the plain language of the policy. *Id.*

The plain language of Taylor's insurance policy establishes that he may recover for injuries arising out of the ownership, maintenance, or use of an uninsured auto Here, Anderson has no liability coverage because of his policy's intentional act exclusion. Taylor argues Anderson is thusly uninsured for purposes of his claim The circumstances of this case do not require a resolution of this issue.

For an injury to arise out of automobile use resulting in an accident, a causal connection must exist between the accident and the injury. *Bisgard v. Johnson*, 525 N.W.2d 225, 231 (Neb. App. 1994) (injury caused by a bullet from a gun did not arise out of the ownership, maintenance, or use of an automobile merely because the shooter was a passenger in the auto). Taylor contends that because Anderson assaulted him following a collision between their two vehicles, the required causation is satisfied. Taylor contends that but for Taylor negligently colliding with Anderson's vehicle the assault would not have occurred and that he can establish the required causal connection.

Viewing the facts of this case in the light most favorable to Taylor, we conclude Taylor cannot recover under the uninsured motorist provision as a matter of law. Taylor's injuries were not the result of an accident involving the operation of an uninsured vehicle as required by the policy. Taylor does not contend the collision itself injured him in any way, and it is undisputed that his only injuries occurred when Anderson assaulted him. Taylor's injuries, accordingly, did not arise from an accident

involving or caused by an automobile. Taylor is not entitled to uninsured motorist coverage under these circumstances. The district court correctly dismissed Taylor's claim.

AFFIRMED.