IN THE COURT OF APPEALS OF IOWA

No. 8-152 / 97-0665
Filed June 24, 1998

GARY GENE SCHLUETER,
Appellant,

vs.

GRINNELL MUTUAL REINSURANCE COMPANY,
Appellee.

Appeal from the Iowa District Court for Cedar County, J. Hobart Darbyshire, Judge.

The plaintiff appeals from the district court's summary judgment ruling denying his claim for prejudgment interest. **AFFIRMED.**

James C. Larew and James R. McCoy of Larew Law Office, Iowa City, for appellant.

Richard G. Hileman Jr. of Simmons, Perrine, Albright & Ellwood, P.C., Cedar Rapids, for appellee.

Considered by Cady, C.J., and Huitink and Vogel, JJ.

PER CURIAM.

Plaintiff appeals the decision of the district court which denied his request for prejudgment interest. We affirm.

On December 7, 1992, Gary Schlueter was injured while driving on a highway when he hit a large bale of hay that had fallen off Richard Ruth's trailer. Schlueter filed a tort action against Ruth. Ruth had an automobile insurance policy with Farm Bureau Insurance Company that had policy limits of $100,000.

Ruth also had a farm insurance policy with Grinnell Mutual Reinsurance Company. Grinnell denied coverage under an exclusion in Ruth's policy. Schlueter filed an action for declaratory judgment against Grinnell. The district court determined the policy exclusion did not preclude Grinnell's duty to defend Ruth. We affirmed on appeal. *Schlueter v. Grinnell Mut. Reinsurance Co.*, 553 N.W.2d 614, 617 (Iowa App. 1996).

While the declaratory judgment action was pending on appeal, Schlueter and Ruth entered into a settlement agreement which provided Schlueter would receive $100,000 from Farm Bureau. Schlueter agreed to dismiss his suit, with prejudice, against Ruth and the parties agreed to submit to an arbitrator the issue of the amount of Schlueter's damages. If the arbitration amount exceeded $100,000, Schlueter would be able to proceed directly against Grinnell to collect this amount. The arbitrator determined Schlueter was entitled to recover $140,312.50. The award did

not include interest. The arbitrator assumed the parties or the clerk of court would calculate interest on the award.

After procedendo issued in the appeal, Grinnell tendered to Schlueter a check for $40,312.50 and a check for $1,391.61, which represented interest at five percent from the date of the arbitration award, November 27, 1995, until the date of payment, August 2, 1996.

Schlueter refused the interest check, claiming he was entitled to prejudgment interest. He filed the present action against Grinnell to collect prejudgment interest. The district court granted Grinnell's motion for summary judgment, finding Schlueter was only entitled to post-arbitration interest. Schlueter has appealed.

Our scope of review for summary judgment is for correction of errors at law. Iowa R. App. P. 4. Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Cuna Mut. Ins. Soc'y v. Matzke,* 532 N.W.2d 759, 760 (Iowa 1995). On appeal, we determine whether a genuine issue of fact exists and whether the law was correctly applied. *Johnson v. Nickerson,* 542 N.W.2d 506, 510 (Iowa 1996).

Schlueter contends summary judgment was improperly entered in this case because material facts are in dispute. He states the arbitration award was for $140,312.50, plus interest. He believes the arbitration claim was to include an award of prejudgment interest.

The supreme court has held where parties enter into a settlement agreement, and the agreement is silent as to prejudgment interest, the judgment amount will draw statutory interest from the date of the judgment only. *Hughes v. Burlington Northern R.R. Co.*, 545 N.W.2d 318, 322 (Iowa 1996). Where there is no agreement as to prejudgment interest and its rate, the court will not impose terms. *Id.* To apply the prejudgment interest provisions of Iowa Code sections 535.3 or 668.13 would in effect change the terms of the voluntary settlement made by the parties. *Id.*

We believe this rule should also apply to arbitration awards. Here, the arbitration award was silent as to prejudgment interest. We determine Schlueter is not entitled to an award of prejudgment interest.

We affirm the decision of district court. Costs of this appeal are assessed to Schlueter.

AFFIRMED.