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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05/17/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIANA CORRALES ANDRADE,) No. 1 CA-CV 11-0413
surviving spouse of Rigoberto)
Huerta (deceased); and the)
surviving natural children of)
Rigoberto Huerta (deceased);)
RIGOBERTO DANIEL HUERTA) DEPARTMENT A
MADRIGAL; MELISSA DENISSE HUERTA)
MADRIGAL; ADRIAN EDUARDO HUERTA)
MADRIGAL; ANDREA KARINA HUERTA)
MADRIGAL; JUAN JOSE HUERTA) **MEMORANDUM DECISION**
ESCALANTE; JORGE LUIS HUERTA)
ESCALANTE; MIGUEL ALEJANDRO)
HUERTA CORRALES; DANA SOFIA)
HUERTA CORRALES; DEBANHY) (Not for Publication -
ALEJANDRA HUERTA CORRALES;) Rule 28, Arizona Rules of
RIGOBERTO SEBASTIAN HUERTA) Civil Appellate Procedure)
CORRALES; MARIA CRISTINA GREY,)
as natural mother of Rigoberto)
Huerta (deceased),)
)
)
Plaintiffs/Appellants,)
)
)
v.)
)
)
STATE COMPENSATION FUND,)
ARIZONA,)
)
)
Defendant/Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-052099

The Honorable Brian R. Hauser, Judge (Retired)

AFFIRMED

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and

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and

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T I M M E R, Presiding Judge

¶1 Diana Corrales Andrade, widow of decedent Rigoberto Huerta, on her own behalf and on the behalf of other potential wrongful death beneficiaries, appeals the superior court's dismissal of her wrongful death complaint against SCF Arizona ("SCF") pursuant to Arizona Rule of Civil Procedure ("Rule") 12(b)(6). For the reasons that follow, we affirm.

BACKGROUND¹

¶2 On April 6, 2006, Huerta was seriously injured in the course of his employment with Santos Framing. SCF accepted his

¹ When considering the propriety of a dismissal pursuant to Rule 12(b)(6), we glean the facts solely from the well-pled allegations set forth in the complaint. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008). We also assume the truth of these facts and all reasonable inferences arising from those facts. *Id.*

workers' compensation claim and began providing health care and compensation benefits. In 2009, Huerta was still experiencing pain, was unable to return to work, showed signs of depression, and began having suicidal thoughts. His health care providers therefore treated him for suicide prevention, among other things.

¶13 On February 27, 2009, SCF terminated all Huerta's benefits, thereby cutting off health care services for his physical pain, depression, emotional distress, and suicidal thoughts. Three months later, Huerta committed suicide.

¶14 Andrade filed suit against SCF, alleging it breached its duty to Huerta to "act reasonably, fairly and in good faith in providing [Huerta] health care services" by terminating his benefits without obtaining input from Huerta or his doctors or considering his risk of committing suicide if his benefits were cut. According to Andrade, SCF's actions caused Huerta to commit suicide. She sought damages for lost income, loss of consortium, pain and suffering, and funeral expenses.

¶15 SCF filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), raising a myriad of arguments. After briefing and oral argument, the superior court granted the motion on Rule 12(b)(6) grounds. The court cited *Diaz v. Magma Copper Company*, 190 Ariz. 544, 549, 950 P.2d 1165, 1170 (App. 1997), which held that beneficiaries may only bring a wrongful

death action pursuant to Arizona Revised Statutes ("A.R.S.") section 12-611 (West 2012)² if the decedent would have had the right to file suit for damages had the decedent survived. The court then found that had Huerta survived his suicide attempt, he would not have been able to file a claim in superior court concerning his entitlement to benefits as the Industrial Commission ("ICA") possesses exclusive jurisdiction over such claim.³ After denying Andrade's motion for reconsideration, this appeal followed.

DISCUSSION

¶6 Motions to dismiss test a complaint's legal sufficiency. *Moretto v. Samaritan Health Sys.*, 190 Ariz. 343, 346, 947 P.2d 917, 920 (App. 1997). Dismissal is warranted when the complaint fails to allege sufficient facts to support a legal claim. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). The superior court properly dismisses a complaint only when it can be certain the plaintiff cannot prove facts entitling it to relief. *Fid. Sec. Life Ins. Co. v. State, Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4, 954 P.2d 580, 582 (1998). As a general policy, "[m]otions to dismiss for failure

² Absent material revision after the date of the events at issue, we cite a statute's current version.

³ Although the minute entry states that exclusive jurisdiction rests with the SCF, we assume from the context that the court intended to refer to the ICA. The parties make the same assumption in their respective arguments.

to state a claim are not favored under Arizona law.'" *State ex. rel. Corbin v. Pickrell*, 136 Ariz. 589, 594, 667 P.2d 1304, 1309 (1983) (quoting *Maldonado v. S. Pac. Transp. Co.*, 129 Ariz. 165, 167, 629 P.2d 1001, 1003 (App. 1981)).

¶7 We review the grant of a motion to dismiss for an abuse of discretion. *Dressler v. Morrison*, 212 Ariz. 279, 281, ¶ 11, 130 P.3d 978, 980 (2006). "A trial court abuses its discretion when it misapplies the law or predicates its decision on incorrect legal principles." *State v. Jackson*, 208 Ariz. 56, 59, ¶ 12, 90 P.3d 793, 796 (App. 2004). We review the superior court's interpretation of statutes de novo. *State v. Johnson*, 195 Ariz. 553, 554, ¶ 3, 991 P.2d 256, 257 (App. 1999).

I. Characterization of complaint

¶8 Andrade first argues the superior court erred by characterizing her complaint as one seeking Huerta's wrongly terminated workers' compensation benefits rather than seeking wrongful death damages. She contends she sued for damages under Arizona's wrongful death statute, A.R.S. § 12-611, which authorizes a damage award for the loss of Huerta, and the court erred by concluding she actually sought lost benefits, which the ICA has exclusive jurisdiction to award. See A.R.S. § 23-921 (West 2012) (charging the ICA with adjudicating claims for workers' compensation benefits); *Gibbons v. Indus. Comm'n*, 197 Ariz. 108, 111, ¶ 9, 3 P.3d 1028, 1031 (App. 1999) ("The ICA has

exclusive jurisdiction to adjudicate claims for workers' compensation benefits.").

¶19 We agree with Andrade she alleged a wrongful death claim premised on SCF's termination of Huerta's benefits, which purportedly caused Huerta to commit suicide. Andrade did not seek unpaid workers' compensation benefits; rather, she sought damages incurred as the result of Huerta's death. But we are uncertain from our reading of the superior court's minute entry ruling whether it mischaracterized her complaint as one seeking workers' compensation benefits and dismissed it on that basis. We can also read the ruling as concluding Huerta would not have had the right to bring the claim underlying the complaint had he lived, leaving as his sole remedy the pursuit of benefits in an ICA proceeding. We need not decide the court's meaning, however, as our inquiry under either interpretation remains the same: Had Huerta survived his suicide attempt, would he have been able to assert the claim underlying Andrade's wrongful death complaint in superior court?

II. Viability of underlying claim

¶10 Arizona's wrongful death statute provides in relevant part:

When death of a person is caused by wrongful act, . . . and the act . . . is such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect

thereof, then, and in every such case, the person who or the corporation which would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured

A.R.S. § 12-611; see also *DeLozier v. Smith*, 22 Ariz. App. 136, 139, 524 P.2d 970, 973 (1974) (“[T]he language of A.R.S. § 12-611 is clear and explicit - the wrongful death action can be maintained only if the decedent could have maintained a suit for personal injuries if death had not ensued.”). Thus, in order for Andrade’s complaint to survive a motion to dismiss, Huerta must have been entitled to assert the cause of action underlying the wrongful death claim against SCF had he survived. See *Frongillo v. Grimmatt*, 163 Ariz. 369, 370, 788 P.2d 102, 103 (App. 1989) (characterizing reference in § 12-611 to decedent’s right to file an action as “descriptive of the nature of the wrong committed to determine if a cause of action exists as a matter of substantive law for the alleged wrongful conduct”).

¶11 Andrade asserts she alleged insurance bad faith as the cause of action underlying her wrongful death claim and argues that because Huerta could have pursued this cause of action had he lived, the superior court erred by dismissing her complaint. Andrade is correct that a worker can assert a bad faith claim in superior court against the employer’s insurer because that claim is independent of the worker’s entitlement to benefits and

therefore does not fall within the ICA's exclusive domain. *Mendoza v. McDonald's Corp.*, 222 Ariz. 139, 149, ¶ 31, 213 P.3d 288, 298 (App. 2009) ("[A] compensation carrier's intentional misconduct in the processing of a claim is neither a 'direct' nor a 'natural' consequence of an employment injury. Any liability for injuries occasioned by such conduct cannot be deemed liability for injuries arising out of the course of employment.") (internal quotation marks and citation omitted). But Andrade waived this argument on appeal by failing to make it to the superior court. *Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 109-10, ¶ 17, 158 P.3d 232, 238-39 (App. 2007) (holding parties waive appellate arguments by failing to raise them in the trial court). Indeed, in her response to SCF's motion to dismiss, Andrade explicitly stated, "Plaintiffs are not suing Defendant [SCF] for the bad faith benefits to which Huerta would be entitled if he[] were alive and seeking relief from Defendant [SCF] for the improper handling of his claim." And when asked by the court during oral argument to identify the cause of action underlying the wrongful death claim, Andrade stated "[t]he wrongful act is the negligent handling -- or the negligent decision to withdraw all [health care] benefits from Mr. Huerta." Andrade's counsel further clarified "[w]e haven't alleged intentional acts in our case because we don't have enough information yet."

¶12 Because Andrade's wrongful death claim was admittedly based on a predicate negligence cause of action, the superior court did not err by dismissing the complaint, as Huerta would not have been entitled to sue SCF for negligent claims handling had he survived. A cause of action for negligent claims handling does not exist against an insurer. *Miel v. State Farm Mut. Auto. Ins. Co.*, 185 Ariz. 104, 111, 912 P.2d 1333, 1340 (App. 1995); see also *Meineke v. GAB Bus. Servs., Inc.*, 195 Ariz. 564, 568, ¶ 17, 991 P.2d 267, 271 (App. 1999) (to same effect). A disgruntled policyholder may only sue the insurer for breach of contract or breach of the implied covenant of good faith and fair dealing, unless the insurer engaged in bad faith. *Miel*, 185 Ariz. at 111, 912 P.2d at 1340. Huerta could not have maintained an action against SCF for negligent claims handling, and therefore Andrade cannot rely on this theory to plead a wrongful death claim. Absent a bad faith claim, Huerta's only available remedy for the loss of his compensation benefits, had he survived, was an ICA award.

¶13 Because Andrade failed to plead a cause of action underlying her wrongful death claim that Huerta could have pursued had he survived, the superior court correctly dismissed the complaint. In light of our decision, we do not address the parties' remaining arguments concerning alternative grounds for dismissal.

CONCLUSION

¶14 For the foregoing reasons, we affirm.

/s/

Ann A. Scott Timmer
Presiding Judge

CONCURRING:

/s/

Patricia K. Norris, Judge

/s/

Donn Kessler, Judge