

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

EMPIRE FIRE AND MARINE)
INSURANCE COMPANY a/s/o)
SPALLCO ENTERPRISES, INC.,)

Plaintiff,)

v.)

CATRICE R. MILLER,)
SHIRLEY WILLIAMS,)
STEVE WILLIAMS, III, and)
NATIONWIDE GENERAL INSURANCE)
COMPANY,)

Defendants.)

C.A. No.: CPU4-09-005649

Date Submitted: February 10, 2012

Date Decided: April 5, 2012

Julie H. Yeager, Esquire
Tybout, Redfearn & Pell
750 Shipyard Drive, Suite 400
Wilmington, DE 19899
Attorney for Plaintiff

Sean Dolan, Esquire
Law Office of Cynthia Beam
131 Continental Drive, Suite 407
Newark, DE 19713
Attorney for Nationwide

Douglas T. Walsh, Esquire
Marshall Dennehey Warner Coleman & Goggin
1220 N. Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899
Attorney for Spallco

John X. Denney, Jr., Esquire
Mattleman Weinroth & Miller, P.C.
Christiana Executive Campus
200 Continental Drive, Suite 215
Newark, DE 19713
Attorney for Shirley Williams

NATIONWIDE'S MOTION FOR REARGUMENT

Nationwide General Insurance Company, defendant (hereinafter "Nationwide") brings this motion for reargument of this Court's decision dated January 6, 2012 denying its motion to dismiss it as a party defendant pursuant to Court of Common Pleas *Civil Rule 59(e)*. Nationwide argues that

the Court's concern regarding outstanding factual questions is misplaced because whether Empire Fire and Marine Insurance Company (hereinafter "Empire") has standing to bring this action against Nationwide is a legal question which does not depend upon development of the factual record. Empire argues that while the Court raised factual issues, the Court did consider the legal standing argument and determined on the pleading that there was no basis to grant the relief demanded.

This matter was commenced on July 15, 2009 by Empire Fire and Marine Insurance Company as the insured for Spallco Enterprises against Catrice R. Miller (Ms. Miller), Shirley Williams (Ms. Williams), and Steve Williams, III (Mr. Williams) alleging negligence, negligent entrustment, and breach of contract for damages sustained to a motor vehicle rented from Spallco by Ms. Williams and Ms. Miller. The Complaint was later amended to add Nationwide as a defendant, on the basis Ms. Williams was insured by Nationwide at the time of the accident. On December 7, 2011, Nationwide filed a Motion to Dismiss pursuant to Court of Common Pleas *Civil Rule 12(b)(6)*. The Court on January 6, 2012, after oral argument, denied the Motion. This is the Court's decision on the motion for reconsideration.

The pleadings allege that on January 5, 2008, Ms. Miller and Spallco Enterprises, Inc. ("Spallco") entered into an agreement for the rental of a motor vehicle, and Ms. Williams is a party to this agreement by authorizing payment for all rental charges. Empire alleged that on January 18, 2008, Mr. Williams was driving the rental vehicle, fell asleep, and the vehicle crashed sustaining severe damage. Empire obtained Default Judgments against Ms. Miller on October 28, 2009 and Mr. Williams on November 30, 2009.

On November 24, 2009, Ms. Williams filed an Answer and Counterclaim. In the Answer, Ms. Williams denied knowing Ms. Miller. Ms. Williams admitted that Mr. Williams lived in her house, but denied authorizing the use of her credit card for charges under the alleged Ms. Miller-Spallco agreement. Ms. Williams averred that she authorized Mr. Williams to use the credit card to

guaranty payment to Spallco so that Mr. Williams could rent the vehicle. Ms. Williams also denied the claim based upon negligent entrustment, breach of contract, and agency. Ms. Williams filed cross-claims against Ms. Miller and Mr. Williams seeking indemnification and contribution. Ms. Williams filed a third party Complaint against Ms. Miller, Mr. Williams, and Amanda Doe, an unknown Spallco employee for fraud, misrepresentation, and civil conspiracy. Finally, Ms. Williams filed a counterclaim against Empire for fraud.

On January 22, 2010, Empire filed an answer and on March 11, 2010, Spallco filed an answer denying all allegations. On March 27, 2011, Empire filed a motion to amend the complaint to add Nationwide as a defendant, Ms. Williams did not oppose, and it was granted on June 17, 2011. The amended complaint was filed on August 16, 2011.

Empire alleged that at the time of the accident, Ms. Williams had insurance coverage with Nationwide and that Mr. Williams is Ms Williams' biological son, living with her. Empire alleged the policy applies to rental by Ms. Williams, or qualifying relatives of Ms. Williams. Thus, since qualifying relatives includes "one who regularly lives in your household and is related to you by blood," accordingly, Nationwide was required to provide coverage for the accident because at the time of the accident, Mr. Williams was Ms. Williams' blood relative, and lived in her house. On this basis, Empire moves the court for a declaratory judgment that Nationwide is obligated to provide coverage to Ms. Williams under the terms of the Ms. Williams-Nationwide contract.

In its December 7, 2011 motion, Nationwide argues that Empire is not a party to the contract of insurance between Nationwide and Ms. Williams, and therefore has no standing to pursue a claim for declaratory judgment. Nationwide further argues that its insured, Ms. Williams, does not contest its denial of coverage.

On December 29, 2011, Empire filed a response to Nationwide's motion to dismiss. In this response, Empire argued that it has standing to pursue this action seeking a Declaratory Judgment

because it has met the appropriate prerequisites for declaratory relief; (1) there is a controversy involving the rights or legal relations of the parties; (2) the claim is asserted against a party that has an interest in contesting the claims; (3) the controversy between the parties is real and adverse; and (4) the issue is ripe for judicial declaration.¹ Specifically, Empire argues that the denial of coverage to Ms. Williams created an actual controversy regarding whether Empire is entitled to reimbursement from Nationwide for damages arising out of the incident at issue in this case.

Nationwide admits that Ms. Williams has standing to file an action for declaratory judgment to challenge Nationwide's denial of her claim for coverage under the Ms. Williams-Nationwide insurance policy. However, Nationwide argues there is no privity of contract between it and Empire.

Empire agrees that standing to sue to enforce the Ms. Williams-Nationwide contract is a purely legal issue not dependent on determination of Ms. Williams' involvement in guarantying payment for the rental vehicle or whether she permitted Mr. Williams to use the vehicle. However, Empire argues its claim satisfies the four requirements for standing under the Delaware Declaratory Judgment Act,² and therefore should not be dismissed. Empire argues that the Declaratory Judgment Act does not require privity of contract as a prerequisite for standing.

Court of Common Pleas ("CCP") *Civil Rule 59(e)* governs motions for reargument and provides:

[a] motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.

¹ *North American Phillips Corp. v. Aetna Cas. and Sur. Co.*, 565 A.2d 956, 961 (Del. Super. 1989).

² 10 *Del. C.* 6501, *et seq.*

Motions for reargument are the device for seeking reconsideration by the trial court of its findings of fact, conclusions of law, or judgment.³ The purpose of motions for reargument is to allow the trial court an opportunity to correct errors prior to appeal.⁴ “New arguments, or arguments that could have been raised prior to the Court’s decision, cannot be raised in a motion for reargument.”⁵ Motions for reargument “will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”⁶ “A motion for reargument is not intended to rehash the arguments already decided by the court.”⁷

In the instant motion, Nationwide moves the Court to reconsider its January 6, 2012 order on the basis that the issues involved are matters of legal interpretation. The issue is whether Empire has standing to bring this action against Nationwide, in light of Ms William’s consent to Nationwide her insurer being dismissed as a party-defendant. Ms. Williams does not challenge Nationwide’s decision denying coverage.

Standing “refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or to redress a grievance.”⁸ Standing is a threshold inquiry that must be established in order for the Court to exercise its judicial powers.⁹ In determining whether a party has standing to pursue a claim, the Court shall only consider the question of whether the party is entitled to file the claim, and not

³ *Beatty v. Smedley*, 2003 WL 23353491, *2 (Del. Super. Mar. 12, 2003).

⁴ *Id.*

⁵ *Citimortgage, Inc. v. Bishop*, 2011 WL 1205149, *1 (Del. Super. Mar. 29, 2011).

⁶ *Beatty*, 2003 WL 23353491 at *2.

⁷ *Citimortgage*, 2011 WL 1205149 at *1.

⁸ *Dover Historical Soc’y. v. City of Dover Planning Comm’n.*, 838 A.2d 1103, 1110 (Del. 2003).

⁹ *Id.*

the underlying merits of the subject matter of the controversy.¹⁰ “The party invoking the jurisdiction of a court bears the burden of establishing the elements of standing.”¹¹

According to the Delaware Supreme Court, in order for a plaintiff to establish standing to pursue a claim, the following requirements must be satisfied:

- (1) the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;
- (2) there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court; and
- (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.¹²

Moreover, the party bringing the claim bears the burden to establish standing irrespective of the type of cause of action asserted. Therefore, to overcome Nationwide’s motion to dismiss, Empire must meet the requirements for a declaratory judgment,¹³ and it must establish that it has standing to pursue the claim.¹⁴ Stated differently, the Declaratory Judgment Act does not independently establish the requisite jurisdictional standing to pursue a claim seeking declaratory relief.

There are two possible ways for a party to establish the elements of standing: (1) to show that it has the right to file this action against Nationwide directly even though it is not a party to the

¹⁰ *Id.*

¹¹ *Id.* at 1109.

¹² *Id.* at 1110.

¹³ *North American Phillips Corp.*, 565 A.2d at 961. The Declaratory Judgment Act, 10 *Del. C.* § 6501 *et seq.* requires (1) there must be a controversy involving the rights or legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claims; (3) the controversy must be between parties whose interests are real and adverse; and (4) the issue involved in the controversy must be ripe for judicial decision. *Id.*

¹⁴ *Cartanıza v. DNREC*, 2009 WL 106554 (Del. Ch. Jan. 12, 2009); *Murphy v. United Servs. Auto Ass’n*, 2005 WL 1249374 (Del. Super. Apr. 28, 2005); *Silver View Farm Tenant Ass’n, Inc. v. Silver View Farm, Inc.*, 1989 WL 5109 (Del. Super. Jan. 24, 1989).

Ms. Williams-Nationwide insurance contract; or (2) to show that it is a third-party beneficiary of the Ms. Williams-Nationwide insurance contract, and therefore has standing to pursue this action.

Delaware law does not permit an injured party to maintain a direct action against the alleged tortfeasor's insurer.¹⁵ In *Delmar News*, the court held that an injured party could not file a direct action against a tortfeasor's insurance company, but rather may bring a direct action only against the tortfeasor, personally.¹⁶ The court acknowledged that, assuming the injured party prevails, the tortfeasor may later be entitled to indemnification pursuant to the terms of the insurance contract.¹⁷ However, the mere fact that the insurer may later be required to pay for the injury either in whole or in part does not mean that the injured party may pursue a claim against the insurance carrier directly before the insured's liability has been determined.¹⁸

As such, Empire has not met the basis to establish that it has standing to sue Nationwide directly for declaratory judgment on the Ms. Williams-Nationwide contract at this time. Ms. Williams' liability, or lack thereof, remains undetermined. During oral argument, Empire alleged it has a default judgment against Mr. Williams, and therefore Nationwide will have to provide coverage for the damages in the event that the outcome of the declaratory judgment action is that Mr. Williams qualified as an insured under Ms. Williams' policy. This argument is misguided. The fact that Plaintiff obtained a default judgment against Mr. Williams personally does not equate with a finding that Mr. Williams was liable for negligence in this action. The judgment against Mr. Williams is based upon his failure to file a responsive pleading. I cannot see how this provides a basis to authorize a direct claim against Nationwide, especially since Ms. Williams does not challenge the denial of coverage by Nationwide. Similarly, Empire has failed to establish in its pleading that it is a

¹⁵ *Delmar News, Inc. v. Jacobs Oil Co.*, 584 A.2d 531 (Del. Super. 1990).

¹⁶ *Delmar News, Inc.*, 584 A.2d at 533-34.

¹⁷ *Id.* at 534.

¹⁸ *Id.*

third party beneficiary to the Ms. Williams-Nationwide contract such that it has standing to pursue this claim.

Third party beneficiaries may pursue actions on contracts made for their benefit.¹⁹ In order for a party to qualify as a third party beneficiary, the contracting parties must have intended to confer a benefit. The *Delmar News* court elaborated that:

Where it is the intention of the promise to secure a performance for the benefit of another, either as a gift or in satisfaction of an obligation to that person, and the promise makes a contract to do so, then such a third person has the right to enforce the contract against the promisor. If, however, the parties to the contract did not intend to benefit the third –party but the third-party happens to benefit from the performance of the contract either indirectly or coincidentally, such third person has no rights under the contract.²⁰

Thus, the dispositive issue in determining whether a party qualifies as a third party beneficiary is whether the party was an intended beneficiary to the contract, or whether it was an indirect beneficiary lacking standing to sue on the contract.

In determining whether a party was an intended beneficiary to an insurance contract, the reviewing court “must look to the language of the policy to determine the parties’ intent.”²¹ Intended beneficiaries need not be specified in the contract to qualify as intended beneficiaries.²² Where the insurance policy expressly states that injured parties may directly sue the insurer before judgment is obtained against the tortfeasor, injured parties are intended beneficiaries.²³ *Likewise, where the insurance policy specifically provides that such suits are prohibited, injured parties are not intended beneficiaries.*²⁴ “A party attempting to establish third party beneficiary status should either plead that it is named or otherwise

¹⁹ *Delmar News, Inc.*, 854 A.2d at 534.

²⁰ *Id.* (citing, Restatement of Contracts (Second) § 302 (1979)).

²¹ *Willis v. City of Rehoboth Beach*, 2004 WL 2419143, *2 (Del. Super. Oct. 14, 2004).

²² *Id.* (citations omitted).

²³ *Willis*, 2004 WL 2419143 at *2.

²⁴ *Id.*

identified in the contract or plead facts which could reasonably lead to the inference that it was an intended beneficiary.”²⁵

Third parties are not deemed to be intended beneficiaries merely because by performance of the contract, the third party receives either an indirect or coincidental benefit.²⁶ The courts of this state have consistently held that in the context of most liability insurance contracts, the fact that an injured party may eventually have the right to receive payment from a tortfeasor’s insurer does not *per se* qualify the injured party as an intended beneficiary to the insurance contract.²⁷

In this case, an extended analysis of whether Empire qualifies as an intended beneficiary under the Ms. Williams-Nationwide contract is unnecessary because this contract specifically prohibits direct suits by injured parties against Nationwide. Empire attached the terms of the Ms. Williams-Nationwide contract to the Amended Complaint. The contract provides, under the subheading *Legal Action Limitations*: “Under the liability coverages of this policy, no legal action may be brought against [Nationwide] until judgment against the insured has been finally determined after trial. *This policy does not give anyone the right to make [Nationwide] a party to any action to determine the liability of an insured.*”²⁸ This case is nearly identical to *Willis*, where the Superior Court granted the insurer’s motion to dismiss a direct action filed by an injured party before the insured’s liability had been determined, because the insurance contract specifically prohibited direct actions against the insurer.²⁹

Finally, Ms. Williams has offered Empire an assignment of rights to sue under the Ms. Williams-Nationwide contract. It is of course Empire’s decision whether to accept this offer, and the Court can neither suggest nor direct that Empire accept. However, Delaware case law on both direct actions and third party actions repeatedly provides that third parties may maintain direct

²⁵ *Greater New York Mut. Ins. Co. v. Travelers Ins. Co.*, 2011 WL 4501207, *3 (D. Del. Sept. 28, 2011).

²⁶ *Willis*, 2004 WL 2419143 at *4.

²⁷ *Id.* (citing *Delmar News, Inc.*, 584 A.2d at 534).

²⁸ Plaintiff’s Amended Complaint, Exhibit C, at page 38.

²⁹ *Willis*, 2004 WL 2419143 at *4.

actions against the insurer if there has been an assignment of rights by the insured.³⁰ Therefore, Empire retains an appropriate avenue to obtain the relief sought.

Accordingly, for the reasons stated, the Court's decision of January 6, 2012 is vacated and Nationwide's motion for reargument is granted. Nationwide is dismissed as a party defendant..

IT IS SO ORDERED.

Alex Smalls,
Chief Judge

Empire Fire Ins.-OP Mar 30 2012

³⁰ *Greater New York Mut. Ins. Co.*, 2011 WL 4501207 at *3.