

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DANIEL SHAW,)
)
Appellant,)
) C.A. No. N11A-05-010 MMJ
v.)
)
NATIONWIDE INSURANCE and)
ROBERT STEINBACH &)
ASSOCIATES,)
)
Defendants.)

Submitted: September 14, 2011

Decided: December 14, 2011

On Appeal from Decision After Trial of the Court of Common Pleas
AFFIRMED

MEMORANDUM OPINION

Daniel Shaw, *Pro Se*, Wilmington, Delaware

Robert Deary, Esquire, Law Office of Cynthia Beam, Newark, Delaware,
Attorney for Defendants

JOHNSTON, J.

Plaintiff-Appellant Daniel Shaw has appealed the May 9, 2011 decision of the Court of Common Pleas. The Court of Common Pleas entered judgment in favor of Defendants-Appellees Nationwide Insurance (“Nationwide”) and Robert Steinebach & Associates (“Steinebach & Associates”), finding that Shaw failed to meet his burden of proof as to his breach of contract claims.

Shaw contends that the Court of Common Pleas’ decision constituted legal error and was not supported by substantial evidence.

FACTUAL AND PROCEDURAL CONTEXT

On September 20, 2005, Shaw was travelling on Route 141 in Newport, Delaware. Shaw, who was driving a 1999 Plymouth Breeze (“the vehicle”), lost control of the vehicle and repeatedly struck a barrier wall. The vehicle flipped over onto its roof before coming to rest on the roadway. The vehicle sustained heavy damage as a result of the accident. Following the accident, Shaw was transported to Christiana Hospital where he was treated for his injuries.

Shaw, however, claimed that he was a passenger in the vehicle, which was driven by Sue Johnson Murray. According to Shaw, the vehicle was rear-ended by another vehicle which left the scene before police officers arrived. Shaw also claimed that Murray fled before officers arrived.

In early October 2005, Shaw reported the accident to his automobile insurance company, Nationwide. Nationwide advised Shaw that he needed to complete a Benefits Package, which consisted of an application for benefits and authorization forms, before his claims would be reviewed. When Shaw failed to submit his paperwork, Nationwide contacted Shaw four more times, requesting that he complete the Benefits Package. Shaw neither responded to Nationwide's letters nor submitted the requested paperwork. Consequently, Nationwide denied coverage for Shaw's claims.

On September 27, 2007, Shaw filed suit in the New Castle County Court of Common Pleas, seeking benefits for no-fault/personal injury protection ("PIP"), personal injury, pain and suffering, lost wages, automobile replacement, and slander stemming from the September 2005 accident. On February 14, 2011, a bench trial was held.

The Trial

Paul Current, a claims adjuster at Nationwide, testified as to the coverage provided in Shaw's automobile insurance policy ("the Policy"). Current first referred to a form captioned "Delaware Motorist's Protection Act Required Statement to Policyholders" ("Form A"), a coverage election form. Current stated that based on the Form A, Shaw had requested the following coverage: bodily injury liability – \$15,000 each person, \$30,000

each accident; property damage liability – \$10,000; PIP – \$15,000 each person, \$30,000 each accident with a zero dollar deductible; and uninsured/underinsured vehicle coverage – \$15,000 each person, \$30,000 each accident. According to Current, the “Auto Policy Declarations” page as well as an “Auto Policy Change Request” – both generated by Nationwide – reflected that Shaw’s Policy included the coverage requested on the Form A.

Current further testified that, based on the Form A, *as completed*, Shaw did not request, and his policy did not include,¹ collision coverage or comprehensive coverage. Current stated that although an “X” was marked in the boxes to select collision coverage and comprehensive coverage, no deductible amount was listed in the appropriate spaces for each. Had there been no deductible for such coverage, Current stated that the form would indicate “\$0” in the appropriate spaces. However, because the deductible amount was blank, Current testified that the Form A was incomplete as to those types of coverage.

Shaw next called Brenda Terrell, a claims specialist at Nationwide. Terrell testified that before Nationwide reviews a claim, the claimant must

¹ Current again relied on the “Auto Policy Declarations” page as well as an “Auto Policy Change Request” when testifying that Shaw’s policy did not include comprehensive coverage or collision coverage.

complete a Benefits Package. According to Terrell, following Shaw's September 2005 accident, Nationwide mailed Shaw a Benefits Package. Shaw, however, never returned the application or the authorization forms. Terrell stated that she attempted to contact Shaw, by mail, three or four more times in order to obtain the application and accompanying paperwork, but her efforts were unsuccessful.

Terrell did acknowledge that Nationwide received a lost wages claim as well as a letter from a third party collection agency seeking payment for medical expenses incurred on September 20, 2005. But because Shaw never submitted the application for benefits, Terrell stated that payment could not be made on these claims.

Tonya Brooks, a former insurance appraiser for Nationwide, testified next for Shaw. Brooks stated that Shaw initially filed his claim under Property Damage Uninsured Motorist ("PDUM"). According to Brooks, Shaw claimed that the vehicle was driven by Murray when it was rear-ended by an unknown driver. Brooks, however, testified that when she went to inspect the vehicle for damage, she saw no evidence of another vehicle hitting the rear of Shaw's vehicle. Additionally, Brooks learned that Shaw was arrested for driving under the influence following the accident.

Therefore, according to Brooks, the PDUM claim was “shut down” and an investigation ensued.

Shaw next called Robert Steinebach, an insurance agent for Nationwide. Referring to the Form A, Steinebach first testified as to the coverage requested by Shaw – testimony which was consistent with Current’s testimony. Steinebach further testified that because no deductible amount was identified for comprehensive coverage or collision coverage on the Form A, Shaw’s policy did not include such coverage. According to Steinebach, even assuming that a blank deductible amount meant a “\$0” deductible, Nationwide does not offer a “\$0” deductible for collision coverage.² Therefore, based on the Form A as completed, Shaw received the following coverage: bodily injury liability, property damage liability, PIP, and uninsured/underinsured vehicle coverage.

Steinebach further testified that a Form A is neither a part of the insurance policy nor a binding contract. Rather, an insurance policy consists of a declaration page, policy booklet and insurance cards.

Following Steinebach’s testimony, Shaw rested his case. The defense moved for a directed verdict on all counts. The Court of Common Pleas

² Steinebach did note, however, that Nationwide offers a “\$0” deductible for comprehensive coverage.

granted a partial directed verdict, dismissing Shaw's slander, pain and suffering, and lost wages claims due to insufficient evidence.

The defense's case-in-chief began with Shaw's testimony in which he described the circumstances of the accident. According to Shaw, Murray was driving the vehicle at the time of the accident and she fled the scene before police officers arrived. Shaw, however, acknowledged that following the accident, he was arrested and convicted of, *inter alia*, driving under the influence. The police report relating to the accident was subsequently admitted into evidence.

The defense next re-called Steinebach, who testified, generally, as to the policy exclusions. According to Steinebach, PIP coverage would not apply "[t]o anyone whose conduct contributed to his or her own bodily injury, if that person intentionally caused self-injury or was injured while committing a felony."

The Court of Common Pleas' Decision

By opinion dated May 9, 2011, the Court of Common Pleas entered judgment in favor of Nationwide and Steinebach & Associates. The court explained that its analysis was focused on two issues: (1) whether Defendants breached a contractual obligation to Shaw under the policy by failing to pay PIP benefits after the September 20, 2005 accident; and (2)

whether Defendants breached a contractual obligation by failing to pay for physical property loss sustained during the same automobile accident. The court stated, at the outset, that evidence of Shaw's criminal convictions or the police report from the accident would not be considered by the court in its analysis.³

In addressing Shaw's PIP coverage, the Court of Common Pleas first noted that it was undisputed that Shaw purchased the statutory minimum coverage for PIP (\$15,000/\$30,000) and that such coverage was in effect on September 20, 2005. The court, however, found that Shaw failed to comply with the Delaware Financial Responsibility Law which requires an insured to submit expenses within two years after they are incurred.⁴

In addition to this statutory obligation, the court found that Shaw failed to comply with all conditions set forth in his policy – specifically, Shaw failed to submit the application for benefits. As the court noted, the “[t]estimony at trial, letters and exhibits appeared to show that [Shaw] did not follow procedure to submit a completed [application], nor did he submit any document that could be reasonably viewed as a claim seeking medical benefits under his PIP policy.”

³ Because the Court of Common Pleas expressly stated that evidence of Shaw's criminal convictions was excluded from its analysis, the Court need not resolve whether it was error for such evidence to be admitted at trial.

⁴ *See 21 Del. C. § 2118(a)(2)(i).*

The Court of Common Pleas turned next to Shaw's physical property loss – the damage to his vehicle. The court first noted that Shaw was not entitled to any coverage under his property damage liability policy because such coverage only extended to property damage caused by the insured to *another* person's vehicle. Here, however, only Shaw's vehicle was damaged.

The Court of Common Pleas then analyzed whether any other coverage entitled Shaw to compensation for his property damage claim. Specifically, the court reviewed “optional” coverage – that is, uninsured/underinsured vehicle coverage, comprehensive coverage, and collision coverage. The court first found Shaw's uninsured/underinsured vehicle coverage to be inapplicable. According to the court, the evidence supported a finding that Shaw was the driver of the vehicle at the time of the accident and that no other vehicle was involved.

The Court of Common Pleas next found that Shaw's property damage claim was not covered by comprehensive coverage. The court noted that, as a preliminary matter, Shaw failed to prove that he even purchased such coverage for the vehicle. In any event, the court found that comprehensive coverage would not apply under the factual circumstances since the loss resulted from a collision.

Finally, the Court of Common Pleas found that Shaw could not seek recovery for his property damage under collision coverage because he failed to prove that a valid contractual agreement existed for such coverage. According to the court, the “Auto Policy Change Request” and “Auto Policy Declarations” page reflected that Shaw never purchased collision coverage for his vehicle. Neither document itemized collision coverage nor specified a correlating premium paid for such coverage.

Accordingly, the Court of Common Pleas concluded that Shaw was not entitled to coverage under his policy for any personal injury or property damage that resulted from the September 20, 2005 accident.

STANDARD OF REVIEW

In considering appeals from the Court of Common Pleas to the Superior Court, factual issues are reviewed on the record and are not tried *de novo*.⁵ This Court’s role is to correct errors of law and to review the factual findings of the court below to determine if such findings are sufficiently supported by the record and are the product of an orderly and logical deductive process.⁶ Questions of law are reviewed *de novo*.⁷

⁵ 11 Del. C. § 5301.

⁶ *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁷ *Ensminger v. Merrit Marine Const. Inc.*, 597 A.2d 854, 855 (Del. Super. 1988).

DISCUSSION

Personal Injury Protection Coverage

Parties' Contentions

Shaw first claims that Nationwide breached its contractual obligations under his policy by denying his personal injury claim. Shaw contends that because Nationwide received documents relating to the September 20, 2005 accident, it also must have received his application for benefits. Shaw, however, presented no evidence at trial demonstrating that the application for benefits had, in fact, been submitted to Nationwide.

In response, Nationwide claims that Shaw never submitted an application for benefits despite numerous requests. Nationwide acknowledges that it received some documentation relating to the accident – a lost wages claim and a letter from a third party collection agency seeking payment for medical expenses – but contends that such information was insufficient for proper review of Shaw's claim.

Analysis

In order for an insured to establish the contractual liability of an insurer for an alleged breach of an insurance agreement, a claimant must show that: (1) there was a valid contract of insurance in force at the time of the loss; (2) the insured has complied with all conditions precedent to the

insurer's obligation to make payment; and (3) the insurer has failed to make payment as required under the policy.⁸

It is undisputed that Shaw and Nationwide entered into a valid contractual agreement for automobile insurance for the vehicle. The parties agree that Shaw's policy, which was in effect on September 20, 2005, included the following coverage: bodily injury liability – \$15,000 each person, \$30,000 each accident; property damage liability – \$10,000; PIP – \$15,000 each person, \$30,000 each accident with a zero dollar deductible; and uninsured/underinsured vehicle coverage – \$15,000 each person, \$30,000 each accident. The parties, however, diverge on whether Shaw complied with all conditions such that Nationwide was obligated to pay PIP benefits.

Before Nationwide is required to make payment on Shaw's claims, Shaw must comply with all conditions created by statute as well as those set forth in the Policy. Pursuant to Delaware's PIP statute, an insured is entitled to compensation for all "reasonable and necessary" expenses incurred within two years from the date of the accident.⁹ The insured has a reciprocal statutory obligation to submit such expenses "as promptly as

⁸ *Casson v. Nationwide Ins. Co.*, 455 A.2d 361, 365 (Del. Super. 1982).

⁹ 21 Del. C. § 2118(a)(2)(a).

practical, in no event more than 2 years after they are received by the insured.”¹⁰

In addition to this statutory obligation, Shaw must comply with all contractual conditions set forth in his policy. Under Nationwide’s General Policy Terms and Conditions, the insured is required to give “prompt notice of all losses and provide written proof of claim[s]” following an accident. Furthermore, the insured must authorize Nationwide to “obtain copies of all wage and medical, dental or other health care provider records.” Specifically, in the context of a PIP claim, Nationwide’s policy requires the insured to submit written proof of the claim, as well as authorization to obtain “medical reports, copies of records, and loss of earnings information.” By completing the Benefits Package, a claimant would be in compliance with Nationwide’s Policy Terms and Conditions.

The Court finds substantial record evidence to support the Court of Common Pleas’ factual finding that Shaw failed to comply with all conditions precedent to Nationwide’s performance. The Court of Common Pleas properly weighed the witnesses’ credibility, and concluded that Shaw, in fact, did not submit the application for benefits or the accompanying

¹⁰ 21 *Del. C.* § 2118(a)(2)(a)(i)(1).

authorization forms. It was within the court's discretion to make such a credibility determination.

The record is devoid of any evidence to suggest that Shaw followed a discernible procedure in submitting his claim. Rather, the evidence establishes that the only documentation submitted by, or on behalf of Shaw, was a lost wages claim and a letter from a third party collection agency seeking payment for medical expenses. As the Court of Common Pleas properly noted, such "extrinsic evidence" does not satisfy Shaw's burden of proof that he complied with statutory and policy procedure. Shaw's failure to complete the requisite application for benefits and authorization forms barred Nationwide from reviewing his claim. Therefore, the Court finds that the Court of Common Pleas properly concluded that Nationwide's denial of coverage for Shaw's personal injury claim was reasonable and justified.

Property Damage Claim

Parties' Contentions

Shaw next claims that Nationwide breached its contractual obligations by denying coverage for his property damage claim. Shaw contends that, although not reflected in any paperwork generated by Nationwide, he purchased collision coverage and comprehensive coverage. In support of

this contention, Shaw points to the Form A, which he claims indicates that such coverage was requested.

Nationwide contends that the Form A does not constitute a binding contract between the parties. Moreover, Nationwide argues that the Form A, as completed, does not specify a deductible amount for either collision coverage or comprehensive coverage, and therefore, is incomplete.

Analysis

At issue here is whether Shaw's policy included coverage that would entitle him to recovery for his property damage claim. An insured may seek compensation for property damage under either underinsured/uninsured vehicle coverage, collision coverage, comprehensive coverage, or property damage liability so long as the insured has purchased such coverage.

Here, it is undisputed that Shaw's policy included property damage liability and underinsured/uninsured vehicle coverage. The Court, however, finds that neither type of coverage was implicated here. First, property damage liability only covers damage caused by the insured to another person's vehicle or property. Because the record evidence establishes that Shaw's vehicle was the only car damaged, the Court of Common Pleas properly found that Shaw was not entitled to any coverage under the property damage liability policy.

Likewise, Shaw is not entitled to coverage for his property damage claim under underinsured/ uninsured vehicle coverage. Such coverage applies only if the insured incurs losses as a result of an accident with another driver who is uninsured, underinsured, or unknown. Here, the Court of Common Pleas weighed the evidence and assessed the credibility of the witnesses, ultimately concluding that no other vehicle was involved in the accident. The Court finds no error in the Court of Common Pleas' factual finding. The documentary evidence and testimony presented at trial establish that Shaw's vehicle was not damaged as a result of contact with another vehicle. The only evidence offered which supports such a theory was Shaw's own testimony, which the court found not credible. Discounting Shaw's testimony was within the court's discretion, and will not be disturbed on appeal.

The Court further finds no error in the Court of Common Pleas' finding that Shaw was not entitled to compensation for his property loss under either comprehensive coverage or collision coverage. The Court finds that no valid contract existed for either type of coverage. In order to prove that an enforceable contract existed for comprehensive coverage and collision coverage, Shaw must demonstrate that: (1) the parties intended that

the contract would bind them; (2) the terms of the contract are sufficiently definite; and (3) the parties exchanged legal consideration.¹¹

The evidence establishes that there was no valid contract for either comprehensive coverage or collision coverage. The “Auto Policy Change Request” and “Auto Policy Declarations” page – both of which Shaw presumably received – demonstrate that Shaw never purchased such coverage. Neither document itemized such coverage for the vehicle or specified a correlating premium to be paid for each. Moreover, no evidence was presented showing that Shaw paid a premium for either type of coverage. As the Court of Common Pleas properly found, there was no “meeting of the minds” as to the inclusion of comprehensive coverage and collision coverage in Shaw’s policy. Therefore, the Court holds that Nationwide acted reasonably in denying Shaw recovery under either comprehensive or collision coverage.

Pain and Suffering, Slander, and Lost Wages Claims

Parties’ Contentions

Finally, Shaw claims error in the Court of Common Pleas’ dismissal of his pain and suffering, slander, and lost wages claims. Nationwide argues

¹¹ *Bryant v. Way*, 2011 WL 2163606, at *4 (Del. Super.).

in response that because no evidence was presented to support such claims, the Court of Common Pleas properly dismissed these claims.

Analysis

The Court finds the Court of Common Pleas' dismissal of Shaw's pain and suffering, slander, and lost wages claims free from legal error. Shaw presented no evidence whatsoever to support these claims. Without such evidence, the court was incapable of calculating damages.

CONCLUSION

The Court finds no error in the Court of Common Pleas' finding that Shaw was not entitled to compensation for his personal injury claims because he failed to comply with all conditions precedent to Nationwide's performance. The Court also finds no error in the Court of Common Pleas' finding that Shaw's policy did not include coverage for his property loss. The Court finds that the Court of Common Pleas' credibility assessments and factual findings are sufficiently supported by the record and are the product of an orderly and logical deductive process. The Court of Commons Pleas did not err as a matter of law.

THEREFORE, the Decision After Trial of the Court of Common
Pleas is hereby **AFFIRMED**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston