IN THE COURT OF APPEALS OF IOWA

No. 1-577 / 10-1816
Filed August 10, 2011

MERLIN TAYLOR,
Plaintiff-Appellant,

vs.

ALLIED PROPERTY AND CASUALTY INSURANCE CO.,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister, Judge.

A plaintiff asserts that the district court erred in granting the defendant insurer's motion for summary judgment on the ground that a claim for underinsured motorist benefits was not brought within the two-year limitations period provided in the insurance policy. **AFFIRMED.**

Nick Critelli of Critelli Law, P.C., Des Moines, for appellant.

Christopher L. Bruns and Robert M. Hogg of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

VAITHESWARAN, J.

We must decide whether a claim for underinsured motorist coverage had to be brought within a two-year contractual limitations period set forth in an insurance policy.

I. Background Facts and Proceedings

Merlin Taylor had automobile insurance, including underinsured motorist coverage, through Allied Property and Casualty Insurance Company. His policy provided that any suit for underinsured coverage would "be barred unless commenced within two years after the date of the accident."

Taylor was in a car accident on January 24, 2008. On July 21, 2009, he informed Allied that he had been offered a settlement by the insurer of the other driver for that driver's policy limits of $25,000. Taylor also informed Allied that he intended to pursue an underinsured claim against Allied. On August 25, 2009, Taylor obtained Allied's consent to settle with the driver of the other vehicle for that driver's policy limits. His contractual deadline for filing suit against Allied for underinsured coverage was January 24, 2010. Taylor did not sue Allied within this time frame.

On May 21, 2010, Taylor filed a petition for declaratory judgment seeking to have the court determine that a suit against Allied for underinsured motorist coverage would be governed by the ten-year statute of limitations applicable to contract actions rather than the two-year period set forth in the policy. Allied moved for summary judgment on the ground that the two-year limitations period was reasonable and enforceable and, because it had expired, Taylor had "no

viable claim to underinsured motorist benefits." The district court granted Allied's motion, and this appeal followed.

We must determine whether the record establishes "'no genuine issue as to any material fact'" and whether "'the moving party is entitled to a judgment as a matter of law.'" *Virden v. Betts & Beer Constr. Co.*, 656 N.W.2d 805, 806 (Iowa 2003) (quoting Iowa R. Civ. P. 1.981).

II. Analysis

Claims for underinsured motorist (UIM) benefits are essentially contractual in nature. *Hamm v. Allied Mut. Ins. Co.*, 612 N.W.2d 775, 779 (Iowa 2000). Generally, the period of time for bringing a claim against an insurer for UIM benefits is ten years. Iowa Code § 614.1(5) (2009); *see Hamm*, 612 N.W.2d at 779. This timeframe may be altered, as long as the altered period is reasonable. *Nicodemus v. Milwaukee Mut. Ins. Co.*, 612 N.W.2d 785, 787 (Iowa 2000). The contractual limitations period's reasonableness is determined in "'light of the provisions of the contract and the circumstances of its performance and enforcement.'" *Id.* (quoting *Douglass v. Am. Family Mut. Ins. Co.*, 508 N.W.2d 665, 666 (Iowa 1993)).[1] Any contractual limitations provision that requires a plaintiff to bring the action before the person's loss or damages can be determined is per se unreasonable. *Id.*

The contractual limitations period in Taylor's policy clearly and unambiguously provided that an underinsured motorist claim had to be filed

[1] *Douglass* was overruled in part by *Hamm*. However, in *Nicodemus* the court stated this overruling "in no way affected . . . the validity of the legal principles set forth in *Douglass* . . . with respect to the enforceability of a policy provision that actually does shorten the statutory limitations period." 612 N.W.2d at 787.

within two years from the date of the accident. *Cf. Hamm*, 612 N.W.2d at 784 (stating the insurer did not clearly articulate the applicable limitations period for claims against the insurer). As applied to Taylor, we conclude this period was reasonable and enforceable, as it is undisputed that Taylor knew the extent of his damages and expressed his intent to file an underinsured motorist claim against Allied approximately six months before the two-year limitations period expired.[2]

We recognize that the Iowa Supreme Court has invalidated contractually-shortened limitations periods. *See Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 335 (Iowa 2005); *Nicodemus*, 612 N.W.2d at 789. Those opinions are distinguishable.

In *Faeth*, a plaintiff was injured in an accident with a self-insured vehicle. 707 N.W.2d at 330. The self-insurer became insolvent after the accident and after the two-year contractual limitation period for filing an uninsured motorist claim had expired. *Id.* The court determined that the limitation period was "clearly unreasonable as applied to [the plaintiff's] claim" because it left the plaintiff "no time to sue following the accrual of his claim." *Id.* at 335. Taylor, in contrast, had more than enough time to file an underinsured motorist claim

[2] *See Hesseling v. State Farm Mut. Auto. Ins. Co.*, No. 09-1562 (Iowa Ct. App. Dec. 8, 2010) (concluding plaintiffs were aware of the fact that they did not know whether the tortfeasors were insured, and had enough of a basis to proceed forward with an uninsured motorist claim against the insurer within a two-year contractual limitations period); *cf. Robinson v. Allied Prop. & Cas. Ins. Co.*, No. 10-1721 (Iowa Ct. App. June 29, 2011) (concluding the two-year period was unreasonable—and therefore invalid and unenforceable—because the plaintiff was not able to "ascertain her loss or damages despite a diligent effort on her part"). Taylor asks us to revisit the approach the Iowa Supreme Court has adopted and adopt a rule that UIM coverage accrues at the date of settlement of the underlying tort case. See *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000). This court is not in a position to alter well-established legal principles. *See State v. Eichler*, 248 Iowa 1267, 1270 83 N.W.2d 576, 577–78 (Iowa 1957).

against Allied, as he settled with the tortfeasor's insurance company approximately five months before the two-year contractual limitations period expired.

In *Nicodemus,* the policy required the insured to "exhaust the tortfeasor's liability insurance by judgment or settlement in order to trigger coverage under the UIM section of the policy." 612 N.W.2d at 787. The policy also prohibited "any suit against the insurer until the insured [had] complied with all policy terms." *Id.* The court concluded "[t]he practical effect of these policy provisions is that an insured has no claim for UIM benefits and may not even institute suit against the insurance carrier until she has obtained a judgment against the tortfeasor or reached a settlement with the tortfeasor." *Id.* at 787–88. The court concluded that, under these circumstances, the two-year limitations period was unreasonable. *Id.* at 788.

Taylor was not faced with a *Nicodemus*-style exhaustion requirement. While the full-compliance clause in Taylor's policy was similar to the full-compliance clause at issue in *Nicodemus*, the Allied policy contained no additional exhaustion requirement. As the district court stated, "[n]othing in Allied's insurance policy prevented [Taylor] from suing Allied within two years of the accident during the exact same time that he could have filed suit against the other driver thereby complying with both the two-year contractual and statutory limitations periods governing the two claims."

Taylor begs to differ. He contends there is a "latent exhaustion requirement" in his policy that impliedly required certain actions to be taken before an underinsured motorist claim could be filed against Allied. He points to

policy language stating, “No one may bring a legal action against us under Underinsured Motorists Coverage until there has been full compliance with all the terms of this policy.” He also cites an endorsement stating, “We will pay compensatory damages which an ‘insured’ is *legally entitled* to recover from the owner or operator of an ‘underinsured motor vehicle’ because of ‘bodily injury’ caused by an accident.” (Emphasis added.) In his view, he could not know what he was legally entitled to recover until he litigated or settled with the tortfeasor.

Factually, this argument does not advance Taylor’s cause because he did settle with the tortfeasor well before his time for suing Allied expired. Legally, his argument runs up against *Leuchtenmacher v. Farm Bureau Mutual Insurance Co.*, 461 N.W.2d 291, 294 (Iowa 1990), in which the Iowa Supreme Court rejected an argument that “legally entitled to recover” required an insured to first obtain a judgment against the third party before pursuing a direct action for underinsured motorist benefits. *Cf. Otterberg v. Farm Bureau Mu. Ins. Co.*, 696 N.W.2d 24, 29 (Iowa 2005) (finding a person was not legally entitled to recover damages where the workers’ compensation statute provided the exclusive remedy but stating, “[W]e have permitted an insured to recover UM benefits even though the insured was unable to recover from the negligent tortfeasor. . . . We concluded a judgment against the underinsured motorist was not required to establish that the insured was ‘legally entitled to recover’ damages from the underinsured motorist.” (citation omitted)). For these reasons, *Nicodemus* does not require reversal of the summary judgment ruling.

We conclude under the facts of this case, the district court did not err in granting summary judgment in favor of Allied.

AFFIRMED.