IN THE COURT OF APPEALS OF IOWA

No. 2-1070 / 12-0343
Filed February 13, 2013

SUSAN LEA HRUBY and
LUKE JOSEPH HRUBY,
Plaintiffs-Appellants,

vs.

ALLIED INSURANCE AND
CASUALTY COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Nancy Baumgartner, Judge.

Susan and Luke Hruby appeal the district court's grant of summary judgment in favor of Allied Insurance and Casualty Company. **AFFIRMED.**

David L. Foster, Iowa City, for appellants.

Michael Moreland and Heather M. Simplot of Harrison, Moreland, Webber & Simplot, P.C., Ottumwa, for appellee.

Heard by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Susan and Luke Hruby appeal the district court's grant of summary judgment in favor of Allied Insurance and Casualty Company. On appeal, we must decide whether the Hrubys' claim for underinsured motorist (UIM) coverage had to be brought within the two-year contractual limitations period in the Allied insurance policy. The Hrubys argue the district court erred in concluding the contractual deadline was reasonable and contend the expiration of the two-year limitation period did not bar their claim. Upon our review, we find the contractual deadline requiring the Hrubys to file their UIM claim within two years of the accident is reasonable and enforceable as a matter of law. Accordingly, we affirm the district court's summary judgment in favor of Allied.

I. Background Facts and Proceedings.

On January 4, 2009, Susan Hruby and her minor daughter, Emma Hruby, sustained injuries when the car Susan was driving collided with another vehicle. The driver of a third vehicle involved in the accident, Leonardo Alvarez, was killed. At the time of the accident, the Hrubys had UIM coverage through their insurance policy provided by Allied Property and Casualty Insurance Company (Allied).

On December 22, 2010, Susan, her husband, Luke, and Emma, through her parents, filed an action against Christopher Fangman, the driver who caused the accident, and Steve's Roofing Inc., the owner of the vehicle driven by Fangman. On December 29, 2010, the Hrubys filed an amended and substituted petition, listing Allied as a defendant along with Fangman and Steve's Roofing

Inc. However, Allied was not served with an original notice,[1] and was dismissed from that action. Meanwhile, the family and the estate of Alvarez (the driver of the third vehicle who was killed in the accident) also filed a lawsuit against Fangman, Steve's Roofing, and the Hrubys.

On August 15, 2011, two years and seven months after the accident, the Hrubys filed this UIM action against Allied. Allied moved for summary judgment on the grounds that the two-year deadline in its UIM policy had expired. The Hrubys resisted, contending the deadline was unreasonable because Susan was unable to ascertain "the full extent of damages incurred" within two years of the accident. The Hrubys also argued "[n]o settlement or other disposition" had occurred on claims made by the family and the estate of Alvarez against Fangman and Steve's Roofing; therefore, it was not clear whether the division of those policy proceeds would satisfy the Hrubys' claims.

The district court ruled the two-year provision was reasonable and entered summary judgment for Allied because the UIM claim was untimely. The Hrubys now appeal.

II. Scope of Review.

We review a district court's grant of summary judgment for errors at law. Iowa R. App. P. 6.907; *Robinson v. Allied Prop. & Cas. Ins. Co.*, 816 N.W.2d 398, 401 (Iowa 2012). We view the evidence in the light most favorable to the nonmoving party. *Robinson*, 816 N.W.2d at 401. Summary judgment is

[1] It is undisputed Allied was not served with proper notice of the December 2010 petition.

appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.;* Iowa R. Civ. P. 1.981(3).

In cases such as this, where the facts relevant to the limitation issue are undisputed, the enforceability of the contractual limitations period is a question of law for the court. *Robinson*, 816 N.W.2d at 401. Accordingly, we are to decide if the district court correctly applied the law to the undisputed facts in deciding that Allied was entitled to summary judgment. *Id*. at 401-02.

III. Discussion.

The Hrubys argue the district court erred in concluding the contractual limitations period was reasonable, and contend the expiration of the two-year limitation period did not bar their claim. The Hrubys allege that because there was an additional party, Alvarez, involved in the original action and no settlement or other disposition of Alvarez's claim had occurred, "even a search conducted with full diligence would not have indicated to the Hrubys how much, if any, insurance will be available to pay their claim after Alvarez's claim is paid and therefore how much underinsured motorist coverage is necessary." The Hrubys further allege that "[i]n addition to the uncertainty created by the presence of an additional party vying for the same limited insurance money, [they] have yet to fully ascertain the amount of damages Susan Hruby has incurred." The Hrubys allege the presence of these two issues "rendered the contractual limitations period unreasonable" in this case.

The contractual limitations period in the Hrubys' policy clearly and unambiguously provided that a UIM claim had to be filed within two years from

the date of the accident. It is undisputed the Hrubys knew of their damages, although perhaps not to the full extent, and attempted to file a UIM prior to the expiration of the contractual deadline.[2]

As our supreme court recently set forth in *Robinson*,[3] a two-year limitation period for UIM claims is reasonable "as a matter of law." *Id*. at 405. The court further found that such a two year deadline will not be invalidated "on grounds the insured did not reasonably discover the full extent of her injuries until later." *Id*. at 402-03, 405 ("[W]e decline to conclude Allied's two-year deadline is unreasonable as applied to Robinson because she did not ascertain the full extent of her injuries within that time.").

The supreme court's holdings in *Robinson* also provide guidance on the issue raised by the Hrubys in regard to the bearing the presence of an additional party, Alvarez, might have on the Hrubys's knowledge of their UIM claim in terms of how much UIM coverage would be necessary after Alvarez's claim settled. As the court observed, "Our state's trial bar has a long-standing custom and practice of filing UIM claims together with the tort action against the driver." *Id*. at 407; *see also Nicodemus v. Milwaukee Mut. Ins. Co.*, 612 N.W.2d 785, 788 (Iowa 2000) (observing it is "certainly permissible under our UIM statute" for an insured to "simply commence her action against the insurer at the same time she files

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[2] The Hrubys contend, and we agree, that the fact that they attempted to file a UIM claim during the two-year contractual limitations period does not "render the limitations period reasonable." Rather, we must view the evidence in the light most favorable to the Hrubys and determine whether the undisputed facts establish that Allied is entitled to judgment as a matter of law. *See, e.g.*, *Robinson*, 816 N.W.2d at 401.

[3] Our supreme court's ruling in *Robinson*, 816 N.W.2d 398 was filed shortly before the Hrubys filed their brief on appeal, but was not mentioned in the brief.

suit against the underinsured motorist, thereby complying with the two-year limitations period governing both claims."). Clearly, a UIM claim that "potentially has merit" should be filed and "no Iowa court should impose sanctions for filing it to toll the contractual deadline." *Robinson*, 816 N.W.2d at 406.

Upon our review of the undisputed facts of this case in the light most favorable to the Hrubys, we find the contractual deadline requiring the Hrubys to file their UIM claim within two years of the accident is reasonable and enforceable as a matter of law. Accordingly, we affirm the district court's summary judgment in favor of Allied.

AFFIRMED.