S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

RELIANCE INSURANCE COMPANY, Plaintiff/Counter Defendant-Appellant,	UNPUBLISHED December 27, 2005
v	No. 256025 Calhoun Circuit Court
RONALD JOHNSON and STACY JOHNSON, Defendants/Counter Plaintiffs-Appellees.	LC No. 02-004552-NZ

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders that dismissed its complaint without prejudice and denied its motion for reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The instant case arose after defendant Ronald Johnson suffered an injury in a workplace accident and received worker's compensation benefits from plaintiff, his employer's insurance carrier. Johnson entered into a settlement agreement with DeJager Construction, the third party responsible for his injuries. Plaintiff then filed suit claiming that, under MCL 418.827(5),[1] it was entitled to be reimbursed out of the settlement fund for the benefits it paid Johnson. In response, Johnson filed a counterclaim asserting that, when plaintiff suddenly ceased paying his worker's compensation benefits, plaintiff intentionally or negligently caused him to suffer emotional distress. Because of the counterclaim, plaintiff filed a motion requesting a stay of the

[1] This provision of the Worker's Disability Compensation Act states in pertinent part:

> Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to date of recovery and the balance shall immediately be paid to the employee or his or her dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits.

proceedings pursuant to an Order of Liquidation issued by the Commonwealth Court of Pennsylvania.

The liquidation order, dated October 3, 2001, contains the following pertinent provisions.

> 3. Commissioner M. Diane Koken and her successors in office (the "Commissioner") are hereby APPOINTED Liquidator of Reliance and the Liquidator or her designees (the "Liquidator") are directed immediately to take possession of Reliance's property, business and affairs as Liquidator, and to liquidate Reliance in accordance with Article V of the Insurance Department Act of 1921, as amended (40 P.S. §§211 et esq.) (the "Act"), and to take such action as the interest of the policyholders, creditors or the public may require.
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> 5. The commissioner, as Liquidator, is vested with title to all property, assets, contracts and rights of action ("assets") of Reliance, of whatever nature and wherever located, whether held directly or indirectly, as of the date of the filing of the Petition for Liquidation.

Additionally, paragraph 20 of the liquidation order granted the liquidator "the discretion to pay as costs and expenses of administration . . . the actual, reasonable and necessary costs of preserving or recovering assets of Reliance." And in paragraph 21, the Pennsylvania court enjoined plaintiff, its affiliates, employees, or attorneys from "the institution or further prosecution of any action in law or equity on behalf of or against Reliance."

Following a hearing on the motion, the trial court entered an order denying plaintiff's request for a stay and dismissing plaintiff's claim without prejudice on the ground that "the Insurance Commissioner of the Commonwealth of Pennsylvania is the correct party at interest."

Plaintiff then filed a motion for reconsideration asserting that the insurance commissioner granted Cambridge Integrated Services (Cambridge) the authority to pursue outstanding claims on behalf of Reliance. Plaintiff therefore requested that the trial court allow it to amend its pleadings and list Cambridge as the actual party in interest. The trial court denied the motion and the instant appeal followed.

On appeal, plaintiff argues that the trial court (1) should have granted its motion for summary disposition on the worker's compensation claim, (2) should have dismissed defendant's legally insufficient counterclaims, and (3) erred in dismissing plaintiff's claim and failing to grant its motion for reconsideration. Because resolution of the third issue renders plaintiff's remaining claims moot, we limit our review to the jurisdictional issue.

The determination as to whether a party has standing is a question of law that this Court reviews de novo. *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co,* 471 Mich 608, 612; 684 NW2d 800 (2004). A trial court's denial of a motion for reconsideration is reviewed for an abuse of discretion. *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003). Such abuse "involves far more than a difference in judicial opinion." *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). Rather, an abuse of discretion occurs

only when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Spaulding v Spaulding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

In *Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992), our Supreme Court stated:

> One cannot rightfully invoke the jurisdiction of the court to enforce private rights, or maintain a civil action for the enforcement of such rights, unless one has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy. This interest is generally spoken of as "standing." [quoting 59 Am Jur 2d, Parties, § 30, p 414).]

Further, a court may sua sponte consider the issue of standing at any time during the proceedings. *46th Circuit Trial Court v Crawford Co*, 266 Mich App 150, 178; 702 NW2d 588 (2005).

Whether plaintiff has standing to bring its claim depends upon the liquidation order issued by the Pennsylvania Commonwealth Court. The Full Faith and Credit Clause of the United States Constitution states that "Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State." US Const, art IV, § 1. The purpose of this clause "is to prevent the litigation of issues in one state that have already been decided in another." *LME v ARS*, 261 Mich App 273, 285; 680 NW2d 902 (2004). Michigan courts are therefore "obligated to enforce the orders of other states' courts." *Jones v State Farm Ins Co*, 202 Mich App 393, 406; 509 NW2d 829 (1993), mod on other grounds *Patterson v Kleiman*, 447 Mich 429, 433 n 3, 434 n 6; 526 NW2d 879 (1994).

In the instant case, the liquidation order appointed the insurance commissioner of Pennsylvania to serve as Reliance's liquidator and take possession of the company's property, business, and affairs. Further, it gave the liquidator title to all of the company's assets, including rights of action, and granted her the authority to spend funds to "preserve or recover" such assets. The liquidation order also enjoined plaintiff, its affiliates, employees, or attorneys from "the institution or further prosecution of any action in law or equity on behalf of or against Reliance." Based on the Commonwealth Court's order, only the commissioner or her agents have standing to file suit seeking to recover funds belonging to Reliance. And under the Full Faith and Credit Clause, the trial court was required to enforce the liquidation order.

Plaintiff filed its complaint in the name of Reliance Insurance Company and gave no indication that it was acting under the authority of the insurance commissioner of Pennsylvania. Moreover, at the hearing on plaintiff's motion to stay the proceedings, the trial court stated that to its knowledge plaintiff did not file its complaint on instructions from the liquidator. It then asked plaintiff's attorney if she was aware of any discussions before the filing of the lawsuit regarding plaintiff's authority to file suit in Calhoun Circuit Court. She responded that to her knowledge no discussion of the liquidation order or plaintiff's authority occurred before the filing of the complaint. Based on the information available to it at the time, the trial court did not err in finding that plaintiff lacked standing. Consequently, the order dismissing plaintiff's

complaint without prejudice correctly held that the insurance commissioner of the Pennsylvania constituted the correct party at interest.

Additionally, the trial court did not abuse its discretion by denying plaintiff's motion for reconsideration. Under MCR 2.119(F)(3), the party requesting reconsideration must establish that the trial court made a palpable error and that a different disposition would result from correction of the error. *Herald Co*, *supra*, 82. Here, the trial court did not err when making its initial finding that plaintiff lacked standing because plaintiff was unable to establish that it had the authority to act on behalf of the insurance commissioner of Pennsylvania.

Furthermore, in its motion for reconsideration, plaintiff asserted that Cambridge had been granted such authority and requested that it be allowed to amend the complaint and substitute Cambridge as the plaintiff. As the trial court noted, it dismissed the complaint without prejudice and there was nothing to prevent the claim from being refiled by the proper party in interest. Although the trial court could reasonably have granted plaintiff's motion, its denial of the request was not "grossly violative of fact and logic." Consequently, we find that no abuse of discretion occurred and affirm the trial court's decision.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood