STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU GENERAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

WENDY BLACK,

Defendant-Appellee,

and

WILLIAM E. CARPENTER,

Defendant.

UNPUBLISHED
May 28, 2009

No. 285011
Branch Circuit Court
LC No. 07-070431-CZ

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying plaintiff's request for an injunction and dismissing plaintiff's suit for declaratory judgment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant Wendy Black and plaintiff's insured, defendant William E. Carpenter, are both Michigan residents who carry Michigan no-fault insurance on their vehicles. They collided in Indiana. At that time, Black was employed in Indiana and Carpenter was soliciting business there. Black sued Carpenter for personal injury in Elkhart County, Indiana. Carpenter answered, committing to the personal jurisdiction of that court. Plaintiff Farm Bureau then brought suit for declaratory judgment in the Branch Circuit Court, seeking an injunctive order declaring that Michigan law applied to the Indiana suit; that any order from the Michigan suit be given full faith and credit in Indiana; and that the decision of the Indiana court, if it applied Indiana law, was not entitled to full faith and credit in Michigan. Although the court issued a temporary injunction against further action in the Indiana court, at the hearing for the permanent injunction, the court stated that it had no authority to tell the Indiana court what law to apply. The court was willing to include in the order "the suggestion that Michigan law applies," but the Indiana court did not have to follow that. The court denied the request for an injunction because the Indiana court had jurisdiction and plaintiff could make its arguments there about which state's law

applied. The order stated that, "if the action was filed in the State of Michigan for non-economic damages, Michigan law would govern the action."

This Court reviews a trial court's decision to grant injunctive relief for an abuse of discretion. *Taylor v Currie*, 277 Mich App 85, 94; 743 NW2d 571 (2007). An abuse of discretion occurs when a trial court's decision is not within the range of reasonable and principled outcomes. *Id.* An injunction is an extraordinary remedy that normally is granted only when justice requires it, when there is no adequate remedy at law, and when there exists a real and imminent danger of irreparable injury. *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 106; 662 NW2d 387 (2003).

In *Kernen v Homestead Dev Co*, 232 Mich App 503, 514; 591 NW2d 369 (1998), this Court articulated the factors to be considered in determining the propriety of issuing a permanent injunction:

> (a) the nature of the interest to be protected,
>
> (b) the relative adequacy to the plaintiff of injunction and of other remedies,
>
> (c) any unreasonable delay by the plaintiff in bringing suit,
>
> (d) any related misconduct on the part of the plaintiff,
>
> (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied,
>
> (f) the interests of third persons and of the public, and
>
> (g) the practicability of framing and enforcing the order or judgment.[1]

Plaintiff prefers that Michigan law apply to this case because Indiana does not have a threshold that an injured person must satisfy in order to bring suit, as is required by MCL 500.3135(7). However, Black filed suit in Indiana. Under Indiana court rules, preferred venue is in "[t]he county where the accident or collision occurred, if the complaint includes a claim for injuries relating to the operation of a motor vehicle." Ind R Trial P 75(A)(3). Thus, there is nothing legally incorrect about Black having filed suit there. The nature of plaintiff's interest—a desire to impose law more favorable to itself despite Black's having chosen Indiana as her venue—is not one courts tend to protect. *Anderson v Great Lakes Dredge & Dock Co*, 411 Mich 619, 628-629; 309 NW2d 539 (1981) ("A plaintiff's selection of a forum is ordinarily accorded deference").

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[1] Defendant cites *Michigan Employees Ass'n v Dep't of Mental Health*, 421 Mich 152; 365 NW2d 93 (1984), for the list of factors given there; however, that case concerns the issuance of a *preliminary* injunction. Plaintiff in this case, as in *Kernan*, seeks a *permanent* injunction.

Plaintiff has numerous potential legal remedies available to it. First, as the trial court noted, the Indiana court has not yet ruled on which state's law will be applied. Plaintiff could yet prevail on this issue. Plaintiff can also move for a change of venue or forum non conveniens.

Black had every right to sue in the state where the accident occurred, and she may have had reasons other than the forum-shopping of which plaintiff accuses her. There may be witnesses nearby, the police report was from Indiana, the applicable traffic laws were those of Indiana, and the location may be more convenient for her. These reasons are clearly not outweighed by plaintiff's attempt to save money by keeping the suit in Michigan where Black might not meet the statutory threshold. Permitting the suit to stay in Indiana where Indiana law might perhaps be applied is not a "hardship" to plaintiff.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot
/s/ Douglas B. Shapiro