STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2230

Philter, Inc.,
Appellant,

vs.

Wolff Insurance Agency, Inc.,
Respondent.

Filed July 18, 2011
Affirmed
Muehlberg, Judge[*]

St. Louis County District Court
File No. 69DU-CV-09-3081

Bruce W. Larson, Wayzata, Minnesota (for appellant)

Rolf E. Sonnesyn, Aaron M. Simon, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Muehlberg, Judge.

U N P U B L I S H E D O P I N I O N

MUEHLBERG, Judge

Appellant challenges the district court's determination that respondent insurance agency was not negligent in failing to advise appellant that workers' compensation

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

insurance is mandatory in Minnesota. Specifically, appellant argues "special circumstances" existed and created a heightened duty of care. Because the district court did not clearly err by finding no special circumstances existed and because respondent did not breach its ordinary duty of care, we affirm.

FACTS

From 2002 to 2005, Philip Kraft was an independent owner and operator of a semi-truck in North Dakota. Shortly after moving from North Dakota to St. Cloud, Minnesota, Kraft incorporated his trucking business into appellant Philter, Inc., in October 2005. Appellant is a Minnesota corporation, with its principal place of business in Minnesota. In the fall of 2006, appellant's insurance policies were set to expire, and insurance agencies began soliciting appellant's business. One of these agencies was respondent Wolff Insurance Agency, Inc., which sent out mass mailings claiming to specialize in selling insurance to trucking companies. Appellant had been working with a North Dakota insurance agency but upon expiration of its policies in September 2006, appellant decided to switch to respondent because it was local, Kraft had heard of it, and it had solicited appellant's business.

Appellant worked with respondent's agent Doug Wolff. During the application process, appellant gave respondent the names of its employees. Respondent knew that appellant did not carry workers' compensation insurance. Minnesota requires employers to carry workers' compensation insurance. Minn. Stat. § 176.181, subd. 2 (2010). After respondent submitted quotes, appellant purchased commercial liability insurance, cargo insurance, and physical damage insurance from respondent. Appellant's policies took

effect on September 17, 2006. Respondent contacted the American Interstate Insurance Company (AIIC) on several occasions for the purpose of obtaining a workers' compensation insurance policy cost estimate for appellant after appellant inquired about additional coverage. AIIC initially declined but respondent convinced AIIC to have a risk agent meet with Kraft, which it did. Respondent provided appellant with a workers' compensation insurance policy premium quote from AIIC. But appellant declined this coverage, telling respondent that the quote was too expensive and appellant could not afford it.

Appellant and respondent had numerous contacts with one another between September 16, 2006, and December 22, 2007. However, appellant never met an agent of respondent in person until trial. Neither respondent nor its agents ever advised appellant that workers' compensation insurance is mandatory in Minnesota. None of respondent's agents confirmed appellant's declination of workers' compensation insurance in writing. Kraft did not know workers' compensation insurance is mandatory in Minnesota.

On December 22, 2007, one of appellant's trucks was in an accident that severely injured two employees. Because appellant was an uninsured employer, Minnesota's special compensation fund provided appellant's injured employees with workers' compensation benefits pursuant to Minn. Stat. § 176.183, subd. 1 (2010). The special compensation fund then commenced an action against appellant for reimbursement of all benefit payments it has made and will be required to make to appellant's employees. The special compensation fund also sought a penalty from appellant of 65% of all compensation benefits paid, as provided in Minn. Stat. § 176.183, subd. 2 (2010).

Appellant's no-fault personal injury protection (PIP) insurance claim for the accident was denied due to the primary nature of workers' compensation insurance. Appellant sued respondent alleging that the damages owed to the special compensation fund were a direct result of respondent's negligence. Prior to trial, the parties stipulated the damages total $900,000 for past, present, and future workers' compensation benefits to appellant's injured workers, including the 65% penalty assessed against appellant.

At a trial to the court held on September 2, 2010, appellant claimed that respondent was negligent because it failed to advise appellant that workers' compensation insurance is required in Minnesota. Appellant argued that "special circumstances" existed, placing a heightened affirmative duty on respondent to advise appellant of the mandatory nature of workers' compensation insurance. The district court found that no special circumstances existed; and thus concluded that respondent's agent was under no duty to inform appellant that workers' compensation insurance is required under Minnesota law. The district court also found that respondent's agent fulfilled the ordinary duty of care to offer insurance coverage as a reasonably prudent person engaged in the insurance business would under similar circumstances. This appeal followed.

D E C I S I O N

> In an appeal from a bench trial, we do not reconcile conflicting evidence. We give the district court's factual findings great deference and do not set them aside unless clearly erroneous. However, we are not bound by and need not give deference to the district court's decision on a purely legal issue. When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the [district] court discretion in its ultimate conclusions and

> review such conclusions under an abuse of discretion standard.

Porch v. Gen. Motors Acceptance Corp., 642 N.W.2d 473, 477 (Minn. App. 2002) (alteration in original) (quotation and citations omitted).

In a negligence action against an insurance agent, the plaintiff must show (1) the existence of a duty; (2) a breach of the duty; (3) causation; and (4) damages. *Johnson v. Urie*, 405 N.W.2d 887, 891 (Minn. 1987).

The primary issue in this case is whether respondent had a duty to inform appellant that workers' compensation insurance is mandatory in Minnesota. Generally, an insurance agent has a duty to exercise the skill and care which "a reasonably prudent person engaged in the insurance business [would] use under similar circumstances." *Gabrielson v. Warnemunde*, 443 N.W.2d 540, 543 (Minn. 1989) (alteration in original). Absent an agreement to the contrary, the scope of this duty is limited to acting in good faith and following the insured's instructions. *Id.* An insurance consumer is typically responsible to educate himself concerning matters of insurance coverage. *Louwagie v. State Farm Fire & Cas. Co.*, 397 N.W.2d 567, 569 (Minn. App. 1986), *review denied* (Minn. Feb. 13, 1987).

But a special circumstance or relationship may impose a heightened duty on the agent to take some sort of affirmative action, rather than just follow the insured's instructions. *Gabrielson*, 443 N.W.2d at 543-44; *see Johnson,* 405 N.W.2d at 889 (holding a duty to "offer, advise or furnish insurance coverage" may arise from the "circumstances of the transaction and the relationship of the agent vis-a-vis the insured");

see also Osendorf v. Am. Family Ins. Co., 318 N.W.2d 237, 238 (Minn. 1982) (stating that agent's admitted obligation to update insurance contract supported finding of negligence); *Atwater Creamery Co. v. W. Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 279 (Minn. 1985) (holding that facts may give rise to a duty to offer additional coverage).

Whether respondent had a duty to advise appellant that workers' compensation insurance is required in Minnesota is a question of law. *See Johnson*, 405 N.W.2d at 891 n.5. When the existence of a duty turns upon disputed facts, the fact-finder must determine the underlying facts. *Gabrielson*, 443 N.W.2d at 543 n.1.

We note the meager findings by the district court on key issues in this case. In a case tried without a jury, the district court must "find the facts specially and state separately its conclusions of law thereon." Minn. R. Civ. P. 52.01. "Findings are necessary to support a judgment and to aid the appellate court by providing a clear understanding of the basis and grounds for the decision." *Moylan v. Moylan*, 384 N.W.2d 859, 863 (Minn. 1986). But neither party raised this issue with the district court or to this court on appeal. *See Frank v. Ill. Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983) ("Where the [district] court fails in its duty to make a finding, the burden is on the parties to alert the court by a motion for amended finding under Minn. R. Civ. P. 52.02."); *Anderson v. Peterson's N. Branch Mill, Inc.*, 503 N.W.2d 517, 518-19 (Minn. App. 1993) (declining to review adequacy of findings because appellant did not move for amended findings). We also conclude remand for additional findings is not warranted because it is clear from the record what findings the district court would make on remand. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand for

additional findings because it was clear from record and district court's order what findings the district court would make on remand).

At oral arguments, appellant's attorney conceded that respondent did not breach its ordinary duty of care to appellant. Thus, we turn our attention to whether respondent owed a heightened duty to advise appellant that workers' compensation insurance is required in Minnesota.

Special circumstances

When the standard-of-care issue goes beyond what an insurance agent should do when clearly requested, to the broader issue of affirmative duties where no request has been made, the issue centers around the professional judgment of the agent, requiring that the standard of care be established by expert testimony. *Atwater*, 366 N.W.2d at 279.

Appellant's request for coverage was broad and did not specifically demand workers' compensation insurance coverage. As in *Atwater*, the request went beyond what respondent was explicitly asked to provide and instead goes to the broader issue of respondent's affirmative duties. Unlike *Atwater*, however, appellant presented expert-witness testimony about respondent's duties as an insurance agency. Appellant's expert testified that in his opinion, an insurance agent in Minnesota, exercising the skill and care of a reasonably prudent person engaged in the insurance agency business, would advise an insured that workers' compensation insurance is mandatory, if the issue of workers' compensation insurance arose. Respondent's expert, on the other hand, testified that respondent's failure to notify appellant that workers' compensation insurance was mandatory did not constitute negligence. The district court recognized the discrepancies

in the testimony but only implicitly found respondent's expert to be more credible, as it ultimately concluded respondent did not have a duty to inform appellant that workers' compensation insurance is mandatory in Minnesota.

Appellant challenges the district court's determination that there were no special circumstances imposing a heightened duty of care on respondent. Minnesota courts have found special circumstances giving rise to a heightened duty of care in only a handful of cases. In analyzing whether special circumstances exist, the supreme court considers whether: (1) the agent knew the insured was unsophisticated in insurance matters; (2) the agent knew the insured was relying on the agent to provide appropriate coverage; and (3) the agent knew the insured needed protection from a specific threat. *See Gabrielson,* 443 N.W.2d at 544; *Johnson*, 405 N.W.2d at 889-90; *Osendorf,* 318 N.W.2d at 238. Appellant argues these three factors have been met in the instant case.

1. Agent knew that the insured was unsophisticated in insurance matters

First, appellant claims it was unsophisticated in insurance matters because when appellant initially sought respondent's services, Kraft had only recently made the transition from being the owner and operator of a semi-truck to an employer with drivers. As a result, Kraft was knowledgeable about the insurance coverage needed for commercial trucks but did not know the types of insurance an employer needed. At trial, respondent's agent testified that he knew appellant was a new employer and this was one of the reasons he requested AIIC reconsider its original declination of workers' compensation coverage for appellant. But the agent also testified that with insureds "in

business for themselves, there is some expectation" they would know workers' compensation insurance is mandatory in Minnesota.

Further, even though Kraft was a new employer, he graduated from high school, attended North Dakota State University for approximately one-and-a-half years, and had business-management experience. Appellant's circumstances are much different from those of the insured in *Osendorf*, a barely literate farmer who had difficulty reading the insurance material and, as a result, had to rely on his agent to help select the appropriate coverage. 318 N.W.2d at 238. Appellant was competent enough to determine the types of insurance commercial trucks needed and was therefore capable of becoming educated about what kinds of insurance employers are required to carry. The record indicates appellant failed to do this. Accordingly, appellant has not demonstrated special circumstances based on a lack of sophistication in insurance matters.

2. *Agent knew the insured was relying on the agent to provide appropriate coverage*

Second, appellant claims respondent knew appellant was relying on the insurance agent to provide appropriate coverage. Kraft stated that during his initial contact with respondent, he asked respondent to "quote . . . coverage for [his] trucking company" and that appellant was due for renewal of his policies. It appears the only specific coverages mentioned at the initial meeting were the types of insurance appellant had previously carried. Kraft testified that he wanted to purchase the minimum required insurance. Further, when asked at trial if he understood appellant was looking for "just the minimum required coverages," the agent answered in the affirmative.

In determining if the insured was relying on the agent for appropriate coverage, this court may consider whether appellant purchased all of its insurance from respondent or if it also used another insurance agent. *See Gabrielson,* 443 N.W.2d at 545 (stating "great reliance" not present where insured "did not place all of his insurance needs into the hands of [one agent] but rather, used another insurance agent as well"); *see also Carlson v. Mut. Serv. Ins.*, 494 N.W.2d 885, 886-88 (Minn. 1993) (finding special circumstances where agent and insured had familial relationship, celebrated holidays and family gatherings together, and insured relied on agent for all insurance needs and for insurance advice). Appellant relied solely on respondent for its insurance needs. But Kraft obtained personal insurance from a different agency even though respondent procured personal insurance for many of its clients.

The record also does not reflect that appellant "delegate[d] decision-making authority" to respondent for its insurance needs. *See Beauty Craft Supply & Equip. Co. v. State Farm Fire & Cas. Ins. Co.*, 479 N.W.2d 99, 101-02 (Minn. App. 1992), *review denied* (Minn. Mar. 19, 1992). "'Special circumstances' may arise when the insured delegates decision-making authority to the agent and the agent acts as an insurance consultant." *Id*. In *Beauty Craft,* this court rejected the insured's contention that a request for "full coverage" created an obligation on the part of the agent to recommend and obtain all appropriate coverages. *Id.* at 101. Similarly, appellant's request for the minimum required insurance did not obligate respondent to recommend and obtain all appropriate coverages. Consequently, any reliance appellant placed on respondent did not rise to the level needed to create special circumstances.

3. *Agent knew that the insured needed protection from a specific threat*

It is undisputed that respondent knew appellant was statutorily required to have workers' compensation insurance. The agent testified that he knew appellant did not have workers' compensation insurance but did not know if appellant procured workers' compensation insurance from another agency after declining the quote respondent provided. He explained that it is not uncommon for an insured in the commercial auto industry to use multiple agents—that it was possible appellant declined the quote respondent obtained and purchased workers' compensation insurance from another agency. It is also possible for trucking companies to lease the services of drivers who are covered by another company's workers' compensation insurance, relieving the hiring company of the responsibility. In fact, after the December 22, 2007 accident, appellant leased the services of independently covered drivers before purchasing its own workers' compensation insurance. But, the agent testified that he and appellant never discussed appellant obtaining workers' compensation insurance from a different agency or hiring independently covered drivers.

Although respondent was aware that appellant did not have workers' compensation insurance when the agent obtained a quote for it, the record does not indicate that respondent knew appellant did not have the required insurance going forward. The agent testified about two plausible scenarios that the evidence does not negate; first, appellant could have purchased workers' compensation insurance from another agency and second, appellant could have hired drivers already covered by other companies. Because it is possible the agent believed appellant complied with the

workers' compensation insurance requirement by alternative means, we cannot conclude the agent knew appellant needed protection from a specific threat after obtaining a quote for appellant.

For purposes of determining the legal duty of an insurance agent, a special circumstance or relationship may also exist when the insured asks the agent to examine the insured's exposure and advise the insured on potential exposure. *Scottsdale Ins. Co. v. Transport Leasing/Contract, Inc*. 671 N.W.2d 186, 196 (Minn. App. 2003). There is no evidence in the record indicating appellant asked respondent to examine its exposure or advise on potential exposure.

The record does not support that the agent knew appellant needed protection from the specific risk that resulted in the loss, and appellant never asked respondent to examine its exposure. Because appellant's lack of sophistication as to insurance matters and its reliance on respondent also do not support the legal determination that special circumstances existed, respondent did not owe appellant a heightened duty of care.

Legal advice

Although we affirm the district court's determination that respondent did not owe a heightened duty of care, we reject the district court's conclusion that an insurance agent informing a prospective or current client of the workers' compensation insurance requirement constitutes legal advice. Insurance agents help clients select insurance policies that provide the most suitable protection for the insured. Notifying a prospective or current client that Minnesota law requires employers to carry workers' compensation insurance is relevant information that may aid in the client's selection of appropriate

coverage. Thus, this information is not legal advice and, contrary to respondent's contention, an insurance agent is not engaging in the unauthorized practice of law when rendering such advice to a client.

Affirmed.