STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1509

Auto-Owners Insurance Company,
Respondent,

vs.

Lawrence Larson,
Appellant.

Filed April 8, 2013
Reversed
Stauber, Judge

Hennepin County District Court
File No. 27-CV-3262

Timothy P. Tobin, Allison M. Lange Garrison, Gislason & Hunter, LLP, Minneapolis, Minnesota (for respondent)

Robert D. Reutter, Dalton, Minnesota; and

Robin L. Zephier (pro hac vice), Abourezk Law Firm, Rapid City, South Dakota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

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

STAUBER, Judge

On appeal from the denial of appellant-insured's motion to dismiss a declaratory-judgment action brought by respondent-insurer to resolve the amount of underinsured-

motorist (UIM) benefits due under appellant's insurance policy with respondent, appellant argues that the case is not one for declaratory judgment because the sole question raised in respondent's complaint does not ask the court to declare the rights, status, or legal relations of the parties. We agree and reverse.

FACTS

Appellant Lawrence Larson obtained an automobile insurance policy from respondent Auto-Owners Insurance Company that provided UIM coverage with a policy limit of one million dollars. Thereafter, appellant was injured when the motor vehicle he was operating was struck from behind by a vehicle driven by P.B. Appellant sustained injuries to his head, neck, lower back, knee, and leg as a result of the accident.

In January 2011, appellant settled his tort claim for P.B.'s liability policy limit of $100,000, and respondent consented to the settlement. In the meantime, appellant also presented a claim to respondent for UIM benefits. The parties engaged in settlement discussions but were unable to reach an agreement to resolve appellant's claims. Consequently, respondent commenced a declaratory-judgment action in Minnesota district court alleging that "a good faith controversy exists between the parties" and seeking a declaration "as to the amount owed [appellant], if any, for the UIM Claim."

After respondent filed its declaratory-judgment action, appellant commenced a contract action in the United States District Court, District of South Dakota, claiming that respondent breached its contract with appellant and conducted itself in "bad faith" towards its insured in violation of South Dakota law. Appellant also filed a motion to dismiss respondent's declaratory-judgment action, arguing in relevant part that

declaratory relief is unavailable under *Stark v. Rodriquez*, 229 Minn. 1, 37 N.W.2d 812 (1949). Thereafter, respondent moved to enjoin appellant from proceeding with the action in South Dakota federal court until the Minnesota state action concluded.

The district court concluded that *Stark* is not applicable because that case is "notably distinguishable" from the present case. The district court also recognized that "the statutory language of the Minnesota Declaratory Judgment Act gives courts broad discretion to resolve and dispose of disputes." Thus, the district court denied appellant's motion to dismiss respondent's declaratory-judgment action. The court also granted respondent's anti-suit injunction, precluding appellant's South Dakota federal court action. This appeal followed.

D E C I S I O N

A district court's findings of fact shall not be set aside unless they are clearly erroneous. *In re Estate of Eckley*, 780 N.W.2d 407, 410 (Minn. App. 2010). But the interpretation of statutes and application of caselaw are questions of law subject to de novo review. *Id.*

The Uniform Declaratory Judgments Act (UDJA) gives courts "within their respective jurisdictions" the power to "declare rights, status, and other legal relations." Minn. Stat. § 555.01 (2012). A party may seek a declaration as to rights, status, or legal relations whenever the declaration will terminate a controversy or remove an uncertainty. Minn. Stat. § 555.05 (2012). "A declaratory judgment is a procedural device through which a party's existing legal rights may be vindicated so long as a justiciable controversy exists." *Weavewood, Inc. v. S & P Home Invest., LLC*, 821 N.W.2d 576, 579

(Minn. 2012). But, the UDJA does not create causes of action that do not otherwise exist and "[a] declaratory judgment action must present a justiciable controversy or a district court has no jurisdiction to declare rights under the act." *Hoeft v. Hennepin Cnty.*, 754 N.W.2d 717, 722 (Minn. App. 2008), *review denied* (Minn. Nov. 18, 2008).

Here, it is undisputed that a justiciable controversy exists and there is no challenge to the district court's conclusion that it has subject-matter jurisdiction over the present action. But appellant argues that declaratory relief is not available because the only declaration respondent seeks is a determination of how much, if any, it owes in UIM benefits. Appellant contends that under *Stark*, such a question is not properly answered in a declaratory-judgment action because the action does not ask the court to "declare rights, status, and other legal relations." Thus, appellant contends that the district court erred by denying his motion to dismiss.

In *Stark*, the plaintiff employed the defendant as a farm hand for a number of years. 229 Minn. at 2, 37 N.W.2d at 812. Although the plaintiff "on numerous occasions during the years . . . requested defendant to state the amount of wages he considered reasonable, . . . defendant refused to do so, stating that he had no place to keep whatever balance was due him and requested that plaintiff keep such amount safely until his employment terminated." *Id.* at 3, 37 N.W.2d at 813. After the defendant's employment ended, the plaintiff sought a declaration as to the amount of wages he owed defendant. *Id*. Specifically, the complaint alleged that "a status of employer and employee existed between plaintiff and defendant; that defendant was employed by plaintiff for a number of years; that plaintiff is indebted to defendant in some amount; and the court is requested

to determine such amount." *Id.* The supreme court stated that the "sole disputed question" in the case was: "'How much?'" *Id.*

The supreme court stated that the declaratory-judgment act is "[a]n act providing for construing rights under conveyances, contracts, statutes, ordinances and other laws and writings." *Id.* The court also recognized that under Minn. Stat. § 555.09[1]: "When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending." *Id.* (quoting Minn. Stat. § 555.09). But despite the language of section 555.09, the supreme court referenced the American Jurisprudence on Declaratory Judgments, which provided "[w]here a declaratory judgment as to a disputed fact would be determinative of issues, rather than a construction of definite stated rights, status, and other relations, commonly expressed in written instruments, the case is not one for declaratory judgment." *Id.* at 4, 37 N.W.2d at 813 (quotation omitted). Finding the American Jurisprudence persuasive, the supreme court held:

> The only issue raised in the complaint is one of fact. It is not a fact raised in connection with a determination of rights, status, or legal relation to the parties, but a question of fact standing alone. It is our opinion that the provisions of the declaratory judgment act are not available in this situation.

Id.

[1] Because Minn. Stat. § 555.09 was last amended in 1943, before *Stark* was decided, the language of the statute is the same today as it was in 1949 when the supreme court in *Stark* considered the language of the statute. *See* 1943 Minn. Laws ch. 25, § 1, at 36-37.

Respondent argues, and the district court found, that this case is "notably distinguishable" from *Stark* because "unlike *Stark*, this case involves the construction—or interpretation—of 'definite stated rights.' That is, the present case involves a dispute over the amount of coverage due under an insurance contract executed by two parties." Respondent argues that unlike in *Stark*, the question is not simply "how much do they owe." Instead, respondent points to the language "if any" contained in the complaint to argue that the question is whether appellant was underinsured and, therefore, entitled to UIM coverage under the policy. Respondent claims that under *Ditlzer v. Spee*, 288 Minn. 314, 180 N.W.2d 178 (1970), such a question is appropriately answered in a declaratory-judgment action.

We disagree. *Ditzler* involved "peculiar circumstances" and is readily distinguishable from the present case. *See Diztler*, 288 Minn. at 315, 321, 180 N.W.2d at 179, 182 (recognizing that it was the "individual defendant" and "not an insurance company bringing the action"). In contrast, like *Stark*, the sole question presented in this case is one of fact that is not connected with a determination of rights, status, or legal relation to the parties. It is undisputed that appellant obtained insurance from respondent, that the policy was in effect at the time of the accident, and that the policy provides UIM coverage. It is also undisputed that the tortfeasor's insurer settled appellant's liability claim for the policy limit of $100,000. As a result, the only question remaining is "how much" does respondent owe under its policy. Although appellant may not be entitled to any compensation under respondent's policy, that question is not a construction of definite stated rights. Rather, it is a disputed fact that would be determinative of the

issue—the issue of "how much" respondent owes appellant under the policy. Because the only issue raised in the complaint does not seek a declaration of the rights, status, or legal relations of the parties, it is not appropriate for a declaratory-judgment action. To hold otherwise would circumvent public policy (favoring injured parties initiating lawsuits.) *See Ditzler*, 288 Minn. at 321, 180 N.W.2d at 182 (recognizing that "in the ordinary personal injury situation there is no occasion for a potential defendant to anticipate the injured party's claim by a declaratory judgment suit"). And respondent fails to cite any authority that permits an insurer to initiate a declaratory-judgment action under these circumstances. Therefore, under *Stark*, we conclude that the district court erred by denying appellant's motion to dismiss respondent's declaratory-judgment action.

Reversed.