NO. COA01-1277

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

NATIONWIDE MUTUAL INSURANCE COMPANY

v. Caldwell County
No. 99 CVS 1958

HOLLY SUZANNE PRICE, STEPHANIE LYNN BROOKSHIRE, MADISON RAE ECKARD, Wallace Dean Buss, Adm. of the Estate of JORDAN MARIE RICHMOND, and Charles Glenn Hamby, Adm. of the Estate of LESLIE DANIELLE HAMBY

Appeal by defendant Madison Rae Eckard by and through her guardian *ad litem*, Regina Leigh Eckard, from judgments entered 23 March 2001 and 18 April 2001 by Judge Beverly T. Beal in Caldwell County Superior Court. Heard in the Court of Appeals 13 June 2002.

No brief filed for plaintiff.

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, PA, by Lawrence D. McMahon, Jr. For defendant-appellee Holly Suzanne Price.

W. C. Palmer for defendant-appellant Madison Rae Eckard by and through her guardian ad litem Regina Leigh Eckard.

THOMAS, Judge.

Defendant Madison Rae Eckard (Eckard) by and through her guardian *ad litem*, Regina Leigh Eckard, appeals a grant of summary judgment regarding the disbursement of funds under a liability insurance policy. For the reasons discussed herein, we affirm.

Plaintiff, Nationwide Mutual Insurance Company, was the liability carrier for Sonia Richmond. On 3 August 1999, Sonia Richmond was operating an automobile in which Suzanne Price, Madison Eckard, Lynn Brookshire, Jordan Richmond and Leslie Hamby were passengers. Richmond and Hamby were killed in the accident and Price, Brookshire and Eckard were injured.

Claims for damages due to bodily injuries and wrongful death were filed against plaintiff's insured. Plaintiff agreed to pay the policy maximum of $100,000, but defendants did not agree on how it should be divided. Plaintiff filed a claim for interpleader, asking the trial court to direct, divide and disburse the $100,000.

The parties were ordered to mediation. The mediated settlement, which did not include Eckard's claim, was as follows: (1) $9,000 to Brookshire; (2) $9,000 to Price; (3) $14,000 to the estate of Jordan Richmond; (4) $18,000 to the estate of Hamby plus one-half the interest accumulated on the funds held by the Caldwell County Clerk of Superior Court through 4 November 2000; and (5) the remaining interest accumulated on $50,000 after 4 November 2000 to be divided pro-rata among Price, Brookshire, Wallace Dean Buss (administrator of the Richmond estate) and Charles Glenn Hamby (administrator of the Hamby estate).

Price moved for an order enforcing and approving the settlement and disbursing the funds to the parties who agreed to the settlement, while leaving $50,000 plus interest for the use and benefit of Eckard. Her motion also requested that the court dismiss and discharge her, Brookshire, Buss, and Hamby from any

further proceeding.

In an amended order filed 18 April 2001, the trial court concluded that: (1) plaintiff's motion for interpleader was appropriate; (2) plaintiff should be dismissed, with the court retaining jurisdiction to determine the proper distribution of funds; (3) Eckard's failure to agree to the settlement does not bar their claims nor prevent the other parties from settling; (4) the interpleader fund has not been exhausted because of the mediated settlement of the other parties; (5) Eckard's claims remain; (6) there is no genuine issue of material fact as to the distribution of $50,000 of the interpleader funds to the four parties participating in the settlement; and (7) the settlement should be approved.

Eckard appeals. By her sole assignment of error, she argues there are genuine issues of material fact and the funds should not have been disbursed. We disagree.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2000). Summary judgment is an extreme remedy and should be granted cautiously, only when the truth is quite clear. *Warren v. Rosso & Mastracco, Inc.*, 78 N.C. App. 163, 336 S.E.2d 699 (1985). Thus, summary judgment may not be used to resolve factual disputes which are material to the disposition of the action. *Robertson v.*

Hartman, 90 N.C. App. 250, 368 S.E.2d 199 (1988).

In the instant case, four defendants have agreed upon a settlement which would deplete one-half of the funds deposited by plaintiff for interpleader. This leaves the remaining defendant, Eckard, with a $50,000 maximum recovery under the policy. The policy limit is $50,000 per injured person. Under the terms of the policy, she cannot receive more than $50,000 from plaintiff. Thus, a settlement leaving her a possible $50,000 is not prejudicial as to recovery under the insurance policy.

We therefore hold that there are no genuine issues of material fact as to the distribution of the interpleader fund and the amount to which Eckard is entitled. Summary judgment, under these circumstances, is proper and we affirm the trial court's order.

AFFIRMED.

Judges MARTIN and TYSON concur.

Report per Rule 30(e)