Rel: April 5, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2023-0528

Ex parte State Farm Mutual Automobile Insurance Company

PETITION FOR WRIT OF MANDAMUS

(In re: Melissa A. Keller and Caroline Keller

v.

Harvey Blanchard, Xavier Blanchard, and State Farm Mutual Automobile Insurance Company)

(Shelby Circuit Court: CV-18-900016)

BRYAN, Justice.

State Farm Mutual Automobile Insurance Company ("State Farm") petitions this Court for a writ of mandamus directing the Shelby Circuit

Court to dismiss an underinsured-motorist claim asserted against it by its insured, Melissa A. Keller ("Keller"). State Farm argues that the claim was filed outside the applicable statute-of-limitations period. We grant the petition and issue the writ.

Background

The accident made the basis of this case occurred on February 6, 2016. Keller was driving in Shelby County near the intersection of Caldwell Mill Road and Valleydale Road. Her daughter, Caroline Keller, was a passenger in her vehicle. Keller's complaint alleged that Xavier Blanchard was driving his vehicle near that intersection, ran a red light, and struck her vehicle. She and her daughter suffered injuries as a result. State Farm insured both vehicles.

Keller filed a complaint in the trial court on January 8, 2018. She sued individually and as next friend of her daughter, who was, at that time, a minor. She named as defendants Xavier Blanchard and his father, Harvey Blanchard, who owned the vehicle Xavier had been driving. The complaint listed various fictitiously named defendants, including the parties' insurers:

> "Defendant No. 4, whether singular or plural, is that entity or those entities who or which afforded any insurance coverage

> to either the drivers or owners of the motor vehicles involved in the collision made the basis [of] this lawsuit as well as any entities who or which caused said collision."

Though Keller's complaint identified the parties' insurers as defendants, it did not state any claim against them. The only claims Keller made were against Xavier, alleging negligence and wantonness; against his father, alleging negligent or wanton entrustment; and against Xavier's employer, if he was employed, alleging negligent or wanton supervision or hiring. Keller amended her complaint on February 6, 2018, but only to include allegations about Caroline's injuries.

On January 26, 2023, Keller gave notice to the trial court that she had settled her claims with Xavier and Harvey Blanchard. On January 27, 2023, Keller and her daughter, who had since reached the age of majority, filed an "Amended Complaint for Underinsured Motorist Coverage" ("the new complaint"). For the first time, they named State Farm as a defendant and stated entirely new claims against it. They made no attempt to substitute State Farm for "Defendant No. 4" described in the original complaint.

The statement of facts in the new complaint asserted that the Blanchards had coverage of $50,000 per person and $100,000 per

accident. It further asserted that the full limits of that coverage had been tendered in January 2023, that the plaintiffs' claims exceeded $50,000 per person, that the plaintiffs had been inadequately compensated by the settlement, and that the Blanchards, therefore, were underinsured. The new complaint asserted that Keller's own policy with State Farm included underinsured-motorist coverage and that she and her daughter were entitled to recovery under the policy.

Count one of the new complaint was styled "Underinsured Motorist Coverage." It alleged:

> "16. At the time of the crash, the Plaintiffs were covered under paid-up policies of auto insurance with State Farm.
>
> "17. The claim against the tortfeasor was resolved in January 2023. At that time, a cause of action arose against State Farm for underinsured motorist coverage under the State Farm policies referenced herein above.
>
> "18. Defendant State Farm is liable under the policies of insurance for the injuries suffered by Plaintiffs due to the negligence and/or wantonness of Defendant Blanchard, an underinsured motorist.
>
> "19. The Plaintiffs were struck by an underinsured motorist as that term is defined in the policies of insurance and by the Alabama appellate courts.
>
> "20. The Plaintiff received a policy limits offer from the tortfeasor's insurer for $50,000 per Plaintiff in liability policy limits.

> "21. Because State Farm is the insurer for the tortfeasors and is also the insurer for the Plaintiffs, State Farm cannot front the money. In other words, the Plaintiffs do not have to obtain consent to settle and a waiver of subrogation as typically required by Lambert v. State Farm[, 576 So. 2d 160 (Ala. 1991)]."

Count two of the new complaint was styled "Breach of Insurance Contract." That count, however, did not state any claim against State Farm. Rather, it said merely that the "Plaintiffs reserve the right to bring a breach of contract action against State Farm. … The cause of action does not arise until after a verdict is rendered against the [underinsured-motorist] carrier." The remainder of the new complaint is a general request for compensatory and punitive damages, interest, costs, and fees.

State Farm moved to dismiss the new complaint as untimely, citing Ex parte Nationwide Insurance Co., 991 So. 2d 1287 (Ala. 2008). It argued that the new complaint was filed more than six years after the date of the accident and thus past the applicable statute-of-limitations period for claims based on contract. See § 6-2-34(9), Ala. Code 1975. Because Keller knew or should have known that State Farm was her own insurer, State Farm argued, her claims did not relate back to the filing of

the original complaint describing "Defendant No. 4" under Rules 9(h) and 15(c), Ala. R. Civ. P.

In response, Keller argued that her claim for underinsured-motorist coverage did not accrue until the date she settled with the Blanchards. Thus, she urged, her underinsured-motorist claim had no need to relate back to the original complaint.

The parties engaged in additional briefing, ultimately agreeing that, under § 6-2-8(a), Ala. Code 1975, regarding the suspension of limitations periods for minors, Caroline Keller's claims were not barred by the six-year statute of limitations. On June 12, 2023, the trial court denied State Farm's motion to dismiss, without making specific findings of fact or law. State Farm thereafter petitioned this Court for a writ of mandamus directing the trial court to dismiss Keller's underinsured-motorist claim against it. We ordered an answer and briefs.

Standard of Review

> "'"A writ of mandamus is an extraordinary remedy, and it 'will be issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.'"'

> "Ex parte Monsanto Co., 862 So. 2d 595, 604 (Ala. 2003) (quoting Ex parte Butts, 775 So. 2d 173, 176 (Ala. 2000), quoting in turn Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 503 (Ala. 1993)). A writ of mandamus is the proper means by which to seek review of a denial of a motion to dismiss filed by a party originally listed as a fictitiously named defendant 'when "the undisputed evidence shows that the plaintiff failed to act with due diligence in identifying the fictitiously named defendant as the party the plaintiff intended to sue."' Ex parte Chemical Lime of Alabama, Inc., 916 So. 2d 594, 596-97 (Ala. 2005) (quoting Ex parte Snow, 764 So. 2d 531, 537 (Ala. 1999)); see also Ex parte Klemawesch, 549 So. 2d 62 (Ala. 1989) (issuing the writ of mandamus and directing the trial court to grant the 'motion to quash service or, in the alternative, to dismiss')."

Ex parte Nationwide Ins. Co., 991 So. 2d at 1289-90.

Analysis

The only claim at issue is Keller's claim against State Farm styled "Underinsured Motorist Coverage." The parties agree that it is a claim based in contract and thus is subject to a six-year statute-of-limitations period under § 6-2-34(9). The determinative issue we must decide is when did that claim accrue and the limitations period begin to run. State Farm says that the limitations period began to run on the date of the accident. Keller says that the limitations period did not begin to run until she settled her claims against the Blanchards and the full extent of damages for underinsured-motorist coverage was known. State Farm

reasons that the law on which Keller relies relates to claims of breach of contract and bad-faith failure to pay. Such claims are distinct, State Farm says, from direct claims against an insurer for underinsured-motorist coverage. For such a direct claim, State Farm urges, accrual occurs on the date of the accident. Keller maintains that there is no real distinction between a direct claim against an underinsured-motorist insurer and a claim of breach of contract against an insurer because, she says, they seek the same relief. Both, she says, should not be tied to the date of the accident.

Section 32-7-23(a), Ala. Code 1975, requires automobile insurers to offer coverage "for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom." That statute defines "uninsured motor vehicle" to include "motor vehicles with respect to which … (4) the sum of the limits of liability under all bodily injury liability bonds and insurance policies available to an injured person after an accident is less than the damages which the injured person is legally entitled to recover." § 32-7-23(b). Thus, coverage under that statute includes coverage for

persons that are "legally entitled to recover damages" from the drivers of underinsured motor vehicles. The statute, however, does not define the phrase "legally entitled to recover damages."

By including that language, the statute does not require that a plaintiff obtain a judgment against the defendant driver before seeking recovery against the plaintiff's insurer under a policy providing uninsured/underinsured-motorist coverage. See LeFevre v. Westberry, 590 So. 2d 154, 160 (Ala. 1991)(citing State Farm Mut. Auto, Ins. Co. v. Griffin, 51 Ala. App. 426, 431, 286 So. 2d 302, 306 (Civ. 1973)). Rather, "legally entitled to recover damages" means that "the insured must be able to establish fault on the part of the uninsured motorist, which gives rise to damages, and must be able to prove the extent of those damages." Griffin, 51 Ala. App. at 431, 286 So. 2d at 306. See also Continental Nat'l Indem. Co. v. Fields, 926 So. 2d 1033, 1036 (Ala. 2005) (quoting Griffin). "In a direct action by the insured against the insurer, the insured has the burden of proving in this regard that the other motorist was uninsured, legally liable for damage to the insured, and the amount of this liability." Griffin, 51 Ala. App. at 431, 286 So. 2d at 306.

This Court has explained that, to protect the "right of the insurer to know of, and participate in, the suit," to protect the "right of the insured to litigate all aspects of his claim in a single suit," and to preserve "the liability phase of the trial from the introduction of … evidence of insurance," Lowe, v. Nationwide Ins. Co., 521 So. 2d 1309, 1309 (Ala. 1988), the plaintiff has two options:

> "A plaintiff is allowed either to join as a party defendant his own liability insurer in a suit against the underinsured motorist or merely to give it notice of the filing of the action against the motorist and of the possibility of a claim under the underinsured motorist coverage at the conclusion of the trial. If the insurer is named as a party, it would have the right, within a reasonable time after service of process, to elect either to participate in the trial (in which case its identity and the reason for its being involved are proper information for the jury), or not to participate in the trial (in which case no mention of it or its potential involvement is permitted by the trial court). Under either election, the insurer would be bound by the factfinder's decisions on the issues of liability and damages. If the insurer is not joined but merely is given notice of the filing of the action, it can decide either to intervene or to stay out of the case. The results of either choice parallel those set out above -- where the insurer is joined as a party defendant. Whether the choice is timely made is left to the discretion of the trial court, to be judged according to the posture of the case. In either event, the trial court could then fashion its judgment accordingly."

Id. at 1310.

These options are consistent with the terms of State Farm's policy issued to Keller. The policy provides coverage as required by § 32-7-23(a). Regarding the resolution of claims, it first provides for resolution by agreement between State Farm and the insured regarding the insured's entitlement to recover damages from the driver of the uninsured/underinsured motor vehicle and the amount of damages the insured is "legally entitled to recover." Alternatively, the policy provides that the insured may file suit against State Farm and the driver of an uninsured/underinsured motor vehicle or give State Farm notice of any such suit against the driver and an opportunity to intervene.

The fact that a suit may be brought directly by an insured against an insurer concurrently with a suit against the uninsured/underinsured-motorist shows that, under Alabama law, the uninsured/underinsured motorist claim must accrue before any resolution or settlement of the insured's claims against the uninsured/underinsured motorist. We therefore disagree with Keller's argument that there is no substantive distinction between claims of breach of contract or bad-faith failure to pay against an insurer and direct claims against providers of uninsured/underinsured-motorist coverage, such as those discussed in

Lowe, Continental, and Griffin, supra. Breach-of-contract and bad-faith claims in fact are not ripe so long as genuine disputes exist as to the uninsured/underinsured motorist's liability. See Pontius v. State Farm Mut. Auto. Ins. Co., 915 So. 2d 557, 564 (Ala. 2005); LeFevre, 590 So. 2d at 162. Thus, it is correct to tie the accrual of those claims to an actual breach by the insurer. To the contrary, direct uninsured/underinsured-motorist claims may be brought while such disputes exist and, thus, must ripen or accrue at some earlier time.

Keller cites several cases that, she urges, say that "a claim for [underinsured-motorist] benefits under an insurance contract accrues only after liability of the tortfeasor has been established." Answer at 8. None of those cases, however, discuss the accrual of direct uninsured/underinsured-motorist claims or when the limitations period applicable to such claims is triggered, as Keller suggests. See Travelers Home & Marine Ins. Co. v. Gray, 171 So. 3d 3 (Ala. 2014) (discussing instead whether default judgment against uninsured/underinsured motorist was binding on insurer); State Farm Mut. Auto. Ins. Co. v. Motley, 909 So. 2d 806 (Ala. 2005) (discussing setoff issues as matter of first impression); Bailey v. Progressive Specialty Ins. Co., 72 So. 3d 587

(Ala. 2011) (discussing whether default judgment against uninsured/underinsured motorist was binding on insurer); Ex parte Barnett, 978 So. 2d 729 (Ala. 2007) (discussing law regarding uninsured/underinsured-motorist claims as it related to the collateral-source rule); Quick v. State Farm Mut. Auto. Ins. Co., 429 So. 2d 1033 (Ala. 1983) (discussing whether to extend tort of bad faith to uninsured/underinsured-motorist coverage); Howard v. Alabama Farm Bureau Mut. Cas. Ins. Co., 373 So. 2d 628 (Ala. 1979) (discussing the quantum of evidence that would be sufficient to withstand a motion for a directed verdict (now a motion for a judgment as a matter of law)).

Those cases do discuss the general principle, stated in § 32-7-23(a) and explained in Griffin, supra, that the insured must establish the uninsured/underinsured motorist's liability as part of the direct claim for benefits. But requiring this proof of liability as an element of a direct uninsured/underinsured-motorist claim against an insurer does not push the accrual of the claim to the date when such liability is established. Indeed, we have rejected such a requirement by refusing to make a judgment against the uninsured/underinsured motorist a prerequisite to bringing suit against the insurer. See LeFevre, 590 So. 2d at 160; Griffin,

51 Ala. App. at 431, 286 So. 2d at 306. To now say that the insured must not merely be able to prove liability on the part of the uninsured/underinsured motorist, but must actually establish liability by settlement or judgment before bringing a direct suit against the insurer would undermine the settled rules and procedures for direct uninsured/underinsured-motorist claims established in Lowe, Continental, Griffin, and other precedent.

Keller cites Griffin, supra, and Ex parte Mason, 982 So. 2d 520 (Ala. 2007), to support the proposition that the accrual date for a direct claim against an insurer on an uninsured/underinsured-motorist vehicle claim should not be tied to the date of the accident. However, in Griffin, the Court of Civil Appeals simply said that the insured must be able to "prove the extent of … damages" in order to recover. 51 Ala. App. at 431, 286 So. 2d at 306. Similarly, this Court in Ex parte Mason held that the expiration of the limitations period applicable to the plaintiff/insured's tort claims against an uninsured/underinsured motorist was not available to the insurer as a defense to the plaintiff/insured's uninsured/underinsured-motorist claim, because the expiration of the limitations period is a procedural, not a substantive, defense. 982 So. 2d

at 521. Uninsured/underinsured-motorist claims against an insurer are based in contract and are subject to a six-year statute of limitations, see § 6-2-34(a), not the two-year statute of limitations applicable to tort claims, see § 6-2-38(l), Ala. Code 1975. Neither opinion says that a direct uninsured/underinsured-motorist claim should not be tied to the date of the accident, as Keller suggests.

In fact, this Court has calculated the limitations period for uninsured/underinsured-motorist claims using the date of the accident as the accrual date. In Ex parte Nationwide Insurance Co., supra, on which State Farm relies, the accident made the basis of the claims occurred on September 1, 2000. The plaintiff sued the defendant driver in August 2002 and included in the complaint claims against fictitiously named defendants who had provided uninsured/underinsured-motorist coverage. Not until June 2007 did the plaintiff move to substitute her own insurer, Nationwide Insurance Company, for one of the fictitiously named defendants. In discussing whether the plaintiff had failed to exercise the due diligence necessary for her claim to properly relate back to the original complaint, this Court presumed that the limitations period had already expired. This Court said: "She did not amend her complaint

to substitute Nationwide for a fictitiously named defendant until June 13, 2007, nine months after the six-year statutory limitations period had expired." 991 So. 2d at 1291. Thus, this Court presumed that the claim had accrued on the date of the accident and that the limitations period had begun to run on that date.

The accident in this case occurred on February 6, 2016. Keller certainly had the right under this Court's decision in Lowe to join State Farm as a defendant in her suit against the Blanchards brought in January 2018. Instead, she waited until January 27, 2023 -- nearly seven years after the date of the accident -- to state any claim against State Farm. Keller urges us to disregard Ex parte Nationwide on the basis that it addressed only relation-back issues and is not of precedential value regarding the date of the accrual of the cause of action. We disagree.

This Court's opinion in Ex parte Nationwide, considered in conjunction with the discussions and procedures set forth in Lowe, Continental, and Griffin, make clear that the accrual date for a direct uninsured/underinsured-motorist claim against an insurer is the date of the accident. Because Keller did not assert her direct claim for underinsured-motorist benefits against State Farm until more than six

years after the date of the accident, that claim is time-barred, and State Farm's motion to dismiss her direct claim should have been granted. Therefore, we grant the petition and issue the writ.

In reaching the foregoing conclusions, we also clarify the extent of our holding as follows. First, Keller has not argued that, as an alternative to her asserting a direct underinsured-motorist claim against State Farm, State Farm had adequate notice of this action under Lowe. Indeed, Keller has not discussed Lowe or the issue of notice at all in her answer, and there is no indication from the materials before this Court that the issue of notice under Lowe was raised in the trial court. Therefore, we do not consider that issue.

Second, we note that State Farm has conceded that Keller's breach-of-contract claim is not time-barred. See Petition at 5 n.3. However, State Farm appears to view the viability of Keller's breach-of-contract claim as "condition[al]" or dependent upon the viability of Keller's direct claim for underinsured-motorist benefits, which, we hold in this opinion, is time-barred. See State Farm's reply brief at 6. Whether the success of Keller's breach-of-contract claim depends upon the success of her direct

claim for underinsured-motorist benefits is an issue that is not before us. Therefore, we also do not consider that issue.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Shaw, Wise, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.