[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11511
Non-Argument Calendar

D.C. Docket No. 8:13-cv-02967-CEH-AAS

CORY R. KAPRAL,

Plaintiff-Appellant,

versus

GEICO INDEMNITY COMPANY,
a foreign insurance corporation,

Defendant-Appellee,

GEICO GENERAL INSURANCE COMPANY,
a foreign insurance corporation,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida

(January 23, 2018)

Before ED CARNES, Chief Judge, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

Cory Kapral sued his insurer, Geico Indemnity Company, after a jury returned a verdict against him in a personal injury lawsuit. He appeals the district court's grant of a directed verdict on one of his claims against Geico.

After Kapral rear ended a vehicle driven by Pamela Beitlich, she sued him to recover medical expenses for injuries she suffered from the accident. Kapral was insured by Geico, and Geico assigned the defense of the lawsuit to the Law Office of James J. Pratt. Geico notified Kapral that the "defense attorney is a salaried GEICO employee who represents our insureds in automobile and homeowner lawsuits." The lawsuit resulted in the entry of final judgment against Kapral in an amount above the policy limit.

Kapral then sued Geico asserting, among other claims, that Geico "failed to defend [him] in the underlying lawsuit" because Geico assigned the defense to an attorney "who failed to represent [his] interests and provide competent legal services with a degree of knowledge and ordinary skill of which similarly situated Florida lawyers would exercise." The case proceeded to trial, and after Kapral rested, Geico moved for a directed verdict on Kapral's inadequate defense claim. The district court granted its motion, and after closing arguments and hearing all of the evidence, the jury returned a verdict in Geico's favor on a separate claim.

Kapral moved for a new trial, contending that the court improperly directed a verdict on his inadequate defense claim. The district court denied his motion. Kapral appeals, contending that the district court erred by granting Geico's motion for a directed verdict.

We review de novo a district court's grant of a directed verdict. Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc., 140 F.3d 898, 905 (11th Cir. 1998). A directed verdict is appropriate when, after considering the record evidence in the light most favorable to the opposing party, the facts and inferences so overwhelmingly favor the verdict that no reasonable juror could reach a contrary decision. Id.

An insurer's duty to defend arises from the language of the insurance contract. Carrousel Concessions, Inc. v. Fla. Ins. Guar. Ass'n, 483 So. 2d 513, 516 (Fla. 3d DCA 1986). "To satisfy its obligation to defend, an insurer (in this case, [Geico]), must provide an adequate defense." Id. (footnote omitted). Kapral contends that his defense was inadequate because counsel failed to take certain actions, "and a jury could have reasonabl[y] concluded that those failures caused the Beitlich [personal injury] lawsuit not to settle."

That contention fails. Under Florida law, an insurer is not vicariously liable for the negligence of the attorney it retains to defend the insured, so long as the attorney is competent and qualified. See Marlin v. State Farm Mut. Auto. Ins. Co.,

761 So. 2d 380, 381 (Fla. 4th DCA 2000) ("[B]ecause the insurer exercises no control over the attorney's performance, it is not, absent an agreement, liable for any alleged acts of professional negligence committed by the attorney."); Aetna Cas. & Surety Co. v. Protective Nat'l Ins. Co. of Omaha, 631 So. 2d 305, 306 (Fla. 3d DCA 1994) (concluding that an insurer "is contractually bound to provide a qualified and competent attorney for the insured, but is not thereafter vicariously responsible for any acts of professional negligence committed by the attorney in handling the case"). Geico presented evidence showing, among other things, that Kapral's attorney had been licensed in Florida for 18 years and had owned a law firm where he practiced personal injury law for 8 years. Kapral presented evidence that his attorney did not "evaluate the Answers to Interrogatories or medical records after the lawsuit was filed," did not promptly send certain items to a Geico adjuster, and did not "timely communicate important information to [him]."

Kapral's evidence shows, at most, that counsel was negligent in representing him. But as the Marlin and Aetna cases demonstrate, even if counsel's performance was negligent, Geico cannot be held liable. See Marlin, 761 So. 2d at 381 ("As the insurer has no obligation or right to supervise or control the professional conduct of the attorney, it is not liable for the litigation decisions of counsel."); Aetna, 631 So. 2d at 306 ("[A]n insurance company is not vicariously liable for the malpractice of the attorney it selects to defend the insured.").

Although it appears that the Marlin and Aetna cases involved outside counsel, not salaried staff counsel, nothing in those decisions indicates that the result would be different in a case involving staff counsel. Nor should the result be different because under Florida law an insurer has no more right to exercise control over staff counsel's professional conduct and independent judgment than it does over outside counsel's conduct and judgment. See In re Rules Governing Conduct of Attorneys in Fla., 220 So. 2d 6, 8 (Fla. 1969) ("We do not hold that a third party may not ethically pay the cost of legal services to be rendered by a lawyer to a particular client. We do hold that in such a situation the lawyer owes undivided loyalty to the client whom he purports to serve, not to the third party source of his compensation."); R. Regulating Fla. Bar 4-1.8(f)(2) ("A lawyer shall not accept compensation for representing a client from one other than the client unless," among other things, "there is no interference with the lawyer's independence of professional judgment . . . .").[1]

In any event, Kapral never argues that, because he was represented by staff counsel and not outside counsel, the Marlin and Aetna decisions are inapposite. Instead, he fails to address the Aetna decision, and he contends that the Marlin

[1] Other states have similarly recognized that an attorney's duties are to the client — that is, the insured — not the insurer. See, e.g., Petition of Youngblood, 895 S.W.2d 322, 328 (Tenn. 1995) ("The obligation to defend the insured under a contract of insurance obviously contemplates representation by counsel who can exercise professional judgment and devote complete loyalty to the insured regardless of the circumstances. The same loyalty is owed the client whether the attorney is employed and paid by the client, is a salaried employee of the insurer, or is an independent contractor engaged by the insurer.") (emphasis added).

decision is distinguishable because his claim, unlike the claim in that case, is "not based on vicarious liability for legal malpractice." The problem for Kapral is that the allegations and evidence underlying his inadequate defense claim all sound in negligence or malpractice; they do not support an inadequate defense cause of action. And because he attempts to impose liability on Geico based on allegations and evidence that counsel failed to take certain actions, his "inadequate defense" claim is, in effect, "based on vicarious liability for legal malpractice."

Because Kapral failed to present any evidence that counsel was not competent or qualified to defend him in the personal injury suit, the district court did not err in granting Geico's motion for a directed verdict on his inadequate defense claim.[2] Nothing in our decision should be read to suggest that Kapral could not pursue a legal malpractice cause of action against the attorney, or that such a claim would or would not be meritorious. See Aetna, 631 So. 2d at 306 ("If trial counsel negligently conducts the litigation, the remedy for this negligence is found in an action against counsel for malpractice and not in a suit against

[2] Kapral also contends that the district court abused its discretion by granting Geico's motion in limine to exclude from trial Geico General Insurance Company's Case Handling and Reporting Guidelines because the guidelines were probative to the "adequacy of the defense provided to [him]." Assuming without deciding that those guidelines should have been admitted, the error would not warrant a different result in this case. The guidelines "set forth what is expected of GEICO Staff Counsel attorneys assigned to defend suits or claims." They also provide that: "Nothing in these Guidelines is intended to interfere with the attorney's exercise of independent judgment in the defense of his/her clients." Because the guidelines concern Geico General Insurance Company's expectations for the performance of staff counsel and do not provide any evidence that would support an inadequate defense claim, the district court did not err in granting Geico's motion for a directed verdict on that claim, regardless of the guidelines.

counsel's employer to impose vicarious liability.") (quoting Merritt v. Reserve Ins. Co., 110 Cal. Rptr. 511, 527 (Cal. Ct. App. 1973)).

AFFIRMED.