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IN THE
COURT OF APPEALS OF INDIANA

Indianapolis Power & Light
Company (d/b/a AES Indiana),
Appellant-Plaintiff,

v.

The Home Insurance Co., *et al.*,
Appellees-Defendants.

September 26, 2022

Court of Appeals Case No.
22A-PL-1211

Appeal from the Marion Superior
Court

The Honorable Heather A. Welch,
Judge

Trial Court Cause No.
49D01-2108-PL-28354

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Indianapolis Power & Light Company, d/b/a AES Indiana (AES Indiana), appeals the trial court's Order granting Appellee-Defendant's, The Home Insurance Co (Home), motion to dismiss AES Indiana's request for a declaratory judgment seeking a declaration of its rights and its insurance carrier's coverage obligation under an excess liability insurance policy.

[2] We affirm.

ISSUE

[3] AES Indiana presents this court with one issue on appeal, which we restate as: Whether Indiana Trial Rule 19, which identifies the necessary parties in a declaratory judgment action, takes precedence over the Indiana statutory liquidation statutes, Indiana Code sections 27-9-4-3(c) and 27-9-3-12(b), which require a trial court to accord full faith and credit to out-of-state liquidation orders, such that the trial court erred in granting Home's motion to dismiss.

FACTS AND PROCEDURAL HISTORY

[4] This case involves an insurance coverage dispute related to certain environmental liabilities arising from coal combustion residuals at AES Indiana's three Indiana generating facilities. Home, a New Hampshire corporation, issued two separate insurance policies to AES Indiana, collectively covering the policy period of January 1, 1970 to January 1, 1976. In June 2003, the Superior Court for Merrimack County, New Hampshire, issued an order of liquidation for Home (Liquidation Order), pursuant to New Hampshire's

Insurers Rehabilitation and Liquidation Act, RSA 403-C:1, *et seq.*, which declared that Home was insolvent and should be liquidated. The Liquidation Order appointed New Hampshire’s Commissioner of Insurance as Home’s Liquidator and directed that “[a]ll actions and proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C:28 and RSA 402-C:5[.]” (Appellant’s App. Vol. II, p. 83). The Liquidation Order also provided, in pertinent part,

To the full extent of the jurisdiction of the [c]ourt and the comity to which the orders of the court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions:

(1) Commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;

...

(6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator.

(Appellant’s App. Vol. II, pp. 84-85). The New Hampshire court requested “the aid and recognition of any Court” in the United States or abroad “to act in aid of and to be complementary to this court in carrying out the terms of the Order.” (Appellant’s App. Vol. II, pp. 84-85).

[5] On August 24, 2021, AES Indiana filed its three-Count Complaint against Home and other insurance companies with the trial court, seeking insurance coverage for claims arising from AES Indiana’s handling of coal combustion residuals. AES Indiana claimed Home had a duty to defend and reimburse AES Indiana for ongoing defense costs against “covered claims relating to coal combustion residual liabilities” pursuant to the two insurance policies issued by Home to AES Indiana between 1971 and 1976. (Appellant’s App. Vol II, p. 48). Specifically, AES Indiana pleaded three causes of action against Home: (1) a breach of contract based on Home’s perceived failure to provide coverage, (2) a declaratory judgment, seeking a determination that the claims are covered under Home’s policies; and (3) unfair claims practices and a breach of the duty of good faith.

[6] On November 22, 2021, Home moved to dismiss AES Indiana’s Complaint in its entirety, arguing that a dismissal was required because “Home was declared insolvent and ordered liquidated by a New Hampshire Superior Court in 2003.” (Appellant’s App. Vol. II, p. 64). Because the New Hampshire court, as part of the Liquidation Order, ordered “a halt to any lawsuits against Home, requiring all claimants to present their claims in the New Hampshire liquidation proceeding,” Home contended that the Liquidation Order “must be honored under fundamental principles of full faith and credit and comity,” and dismissal was mandated under: (1) Indiana Code section 27-9-4-3(c), which requires claimants against insurers in liquidation to present their claims in the liquidation proceeding pending in the insurer’s domiciliary jurisdiction, and (2)

Indiana Code section 27-9-2-12(b), which requires a foreign injunction prohibiting suits against an insurer in liquidation to be enforced by Indiana courts. (Appellant’s App. Vol. II, p. 65).

[7] In response, on December 22, 2021, AES Indiana consented to the dismissal of the breach of contract claim and the unfair claims practices and breach of the duty of good faith but objected to the dismissal of the declaratory judgment claim, arguing that Home was a necessary party pursuant to Indiana Trial Rule 19. While AES Indiana acknowledged both the Liquidation Order and the Indiana Insurance Code statutes, AES Indiana argued that these statutes “conflict with Home being an indispensable party to the declaratory judgment action” and, therefore, the “Trial Rules control.” (Appellant’s App. Vol. II, p. 90). It contended that comity principles should not apply because Home is a necessary party to its action, and that Indiana courts “do not rely on comity when its application violates Indiana law or injures Indiana citizens.” (Appellant’s App. Vol. II, p. 91). On January 11, 2022, Home filed a reply brief.

[8] On February 28, 2022, the trial court conducted a hearing on Home’s motion to dismiss. On March 30, 2022, the trial court concluded that the Indiana statutes compelled dismissal “under Indiana Trial Rule 12(B)(6)” and granted Home’s motion. (Appellant’s App. Vol. II, p. 198). In its Order, the trial court concluded:

[T]he Liquidation Order requires the bringing of AES Indiana’s claim within the Liquidation Proceeding in New Hampshire and

enjoins it from proceeding on that claim here or anywhere else. The [c]ourt finds the Liquidation Order to be clear and unambiguous, and that there is not an exception for declaratory judgments. With this in mind, the [c]ourt finds that any remedy that AES Indiana is seeking from Home would come from the New Hampshire liquidation proceeding, not from this [c]ourt. The [c]ourt further finds that Indiana Code § 27-9-3-12(b) and § 34-39-4-3(b) are clear that upon issuance of the [L]iquidation [O]rder, AES Indiana must pursue all of its claims against Home in the liquidation proceeding. Accordingly, the [c]ourt finds that it doesn't have authority over the declaratory judgment claim.

(Appellant's App. Vol. II, p. 196). The trial court rejected AES Indiana's argument that the Indiana Declaratory Judgment Act conferred subject-matter jurisdiction upon the trial court to adjudicate its claim against Home, explaining:

The [c]ourt points out that the Declaratory Judgment Act is a general statute, whereas Indiana Code § 27-9-3-12(b) and § 34-39-4-3(b) (both of which are provisions of the Insurance Code relating to claims against insurers in liquidation) are specific statutes. The [c]ourt notes that Indiana law is clear that "when general and specific statutes conflict in their application to a particular subject matter, the specific statute will prevail over the general statute." The [c]ourt finds that this defeats AES Indiana's argument that Home is a necessary party.

(Appellant's App. Vol. II, pp. 196-97) (internal citation omitted). The trial court disagreed with AES Indiana's contention that Trial Rule 19, and not the Indiana Insurance Code, is controlling and noted that it is only "on matters of procedure, to the extent a statute is at odds with our rule, the rule governs."

(Appellant's App. Vol. II, p. 197). Because the Indiana Code provisions are

substantive, and not procedural, the trial court reasoned that as the statutes at issue create, define, and regulate the rights when an insurance company becomes insolvent, “Ind. T.R. 19 does not trump the statute.” (Appellant’s App. Vol. II, p. 197). In applying the comity principles, the trial court held that “[w]hile the [c]ourt is not required to give full faith and credit to the law of a sister state, the [c]ourt will do so here as it finds that denying Home’s [m]otion to [d]ismiss would cause inconsistencies throughout the lawsuits—which is why the principle of comity exists.” (Appellant’s App. Vol. II, pp. 197-98).

[9] On April 20, 2022, AES Indiana moved to convert the trial court’s interlocutory order to a final and appealable order, to which Home did not object. On May 12, 2022, the trial court granted AES Indiana’s motion and amended its March 30, 2022 Order.

[10] AES Indiana now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[11] AES Indiana contends that the trial court erred in dismissing its Complaint for its failure to state a claim on which relief could be granted. Maintaining that the Indiana Insurance Code provisions at issue are procedural in nature as they further the orderly dispatch of judicial business, AES Indiana asserts that the provisions conflict with Indiana Trial Rule 19 which necessitates Home’s presence in this suit to obtain complete relief and therefore that dismissal of its Complaint was improper. “A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it.” *Kitchell v.*

Franklin, 997 N.E.2d 1020, 1025 (Ind. 2013). Review of a trial court’s grant or denial of a motion based on Trial Rule 12(B)(6) is therefore *de novo*. *Id.* When ruling on a motion to dismiss, “we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the non-movant’s favor.” *Id.* “[A] complaint may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on the face of the complaint that the complaining party is not entitled to relief.” *City of New Haven v. Reichhart*, 748 N.E.2d 374, 377 (Ind. 2001).

[12] AES Indiana brought its declaratory judgment claim against Home pursuant to Indiana’s Declaratory Judgment Act and Trial Rule 57. The Declaratory Judgment Act gives the trial court the authority to “declare rights, status, and other legal relations” between AES Indiana and Home. Ind. Code § 34-14-1-1. In turn, Trial Rule 57 determines that the “procedure for obtaining a declaratory judgment shall be in accordance with these [trial] rules.” One of the trial rules that AES Indiana relies on extensively is Trial Rule 19, which provides that a person subject to the service of process shall be joined as a party if in his absence no complete relief can be accorded among those already parties.

[13] In partial contrast with Trial Rule 19, and at issue here, is the detailed statutory scheme adopted by the Indiana Legislature to govern claims against insolvent insurers, including those domiciled in foreign jurisdictions. Indiana Code section 27-9-4-3(c) states that:

Claimants residing in Indiana may file claims with the liquidator or ancillary receiver, if any, in Indiana or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

In other words, as there is no ancillary receiver or liquidator for Home in Indiana, pursuant to the statute, AES Indiana is required to file its claim with Home's domiciliary liquidator. In accordance with the New Hampshire Insurers Rehabilitations and Liquidation Act and the Liquidation Order, AES Indiana must then pursue its claim against Home in the liquidation proceeding in New Hampshire. Moreover, the Indiana Insurance Code also requires that Indiana courts enforce injunctions against the pursuit of actions against the insurer or the liquidator. Indiana Code section 27-9-3-12(b) provides that:

The courts of Indiana shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when those injunctions are included in an order to liquidate an insurer issued under similar provisions in other states.

Accordingly, the effect of these statutory provisions is to divest Indiana's courts of jurisdiction over claims against insurers in liquidation, which conflicts with AES Indiana's contention that Home is a necessary party in its proceeding before Indiana's courts under Trial Rule 19. Although AES Indiana concedes that both the Liquidation Order and the applicable Indiana Insurance Code liquidation provisions bar the pursuit of its claim against Home before the trial

court, AES Indiana characterizes Indiana’s Insurance Code statutes at issue as procedural, rather than as substantive, and as such, contends that Trial Rule 19 supersedes the two procedural statutes.

[14] In *Church v. State*, 189 N.E.3d 580, 588 (Ind. 2022), our supreme court reiterated the general rule that “[t]o the extent a procedural statute is at odds with one of our procedural rules, the rule governs” but the Trial Rules “cannot abrogate or modify substantive law.” “[L]aws are substantive when they establish rights and responsibilities, and laws are procedural when they ‘merely prescribe the manner in which such rights and responsibilities may be exercised and enforced.’” *Id.* (quoting *State ex rel. Blood v. Gibson Cir. Ct.*, 157 N.E.2d 475, 478 (Ind. 1959)). In determining whether a statute with “both substantive and procedural elements” is procedural or substantive in nature, the *Church* court adopted a test “that looks at the statute’s predominant objective.” *Id.* at 590. “If the statute predominantly furthers judicial administrative objectives, the statute is procedural. But if the statute predominantly furthers public policy objectives involving matters other than the orderly dispatch of judicial business it is substantive.” *Id.*

[15] Considering whether a statute restricting a criminal defendant’s right to depose child victims of sex offenses if they are under the age of sixteen, the *Church* court acknowledged the statute contained procedural elements but categorized the statute as substantive because it “predominantly furthers public policy objectives” of guarding child victims of sex crimes from needless trauma inflicted through compelled discovery depositions and of vindicating child

victims’ rights conferred under the Indiana Constitution’s Article 1, section 13(b) “to be treated with fairness, dignity, and respect throughout the criminal justice process . . . to the extent that exercising these rights does not infringe upon the constitutional rights of the accused.” *Rosenbaum v. State*, -- N.E.3d --- 2022 WL 2900974 (Ind. Ct. App. July 22, 2022) (quoting *Church*, 189 N.E.3d at 590-91). It is axiomatic that in its analysis our supreme court did not merely focus on the statute standing independently from other provisions but rather placed this specific statute within the broader context of “among other things, its location in the ‘Victim Rights’ Chapter of the Indiana Criminal Code.” *Church*, 189 N.E.3d at 591.

[16] We reach a similar conclusion here. Indiana’s insurance liquidation statutes are a blend of substantive rights and procedural mechanisms. Indiana’s insurance liquidation statutes confer the right on claimants to file a claim against insolvent insurance companies. Together with this conferment of a right, Indiana Code section 27-9-4-3(c) provides instructions as to the “method and time of asserting such right.” *See id.* at 591. While Indiana Code section 27-9-3-12(b) takes away the right of claimants to enforce the claim before an Indiana tribunal when “injunctions [issued in another state] are included in an order to liquidate an insurer” must be given full faith and credit, the statute also implicitly acknowledges the procedural path of possibly asserting the right in an out-of-state tribunal before a court-appointed liquidator. This “procedural wrapping” of both statutes does not render the statutes procedural in nature because the overarching purpose of the statutory scheme reflects “public policy objectives

involving matters other than the orderly dispatch of judicial business.” *See id.* at 589. The predominant purpose of the provisions supports a policy determination by the Indiana Legislature to facilitate the orderly and uniform liquidation of insolvent insurers nationwide. This purpose is underscored by the span of Title 27 of the Indiana Code which regulates insurance. Title 27 includes nineteen articles and hundreds of chapters, with Article 9 addressing the supervision, rehabilitation, and liquidation of insurers. The sheer volume of Title 27 alone supports an indication that the Title does not merely deal with the method and time of asserting procedural aspects but that it also establishes whose right prevails by determining substantive rights.

[17] In support of its argument that Indiana’s insurance liquidation statutes merely involved the “orderly dispatch of judicial business,” AES Indiana points to the fact that, “[i]n its filings with the trial court, Home several times identified the liquidation process as a procedure.” *See id.* at 590; (Appellant’s Br. p. 18). However, this is exactly what the *Church* court cautioned against and was the reason the court developed its predominant objective test as “the terms ‘substance’ and ‘procedure’ precisely describe very little except a dichotomy, and what they mean in a particular context is largely determined by the purposes for which the dichotomy is drawn.” *Id.* at 589 (quoting *Sun Oil Co. v. Wortman*, 486 U.S. 717, 726, 108 S.Ct 2117, 100 L.Ed.2d 743 (1988)). Accepting AES Indiana’s analysis would result in subjecting insurers in liquidation to pursue piecemeal litigation of a multiplicity of claims across the country rather than to employ its assets for the benefits of claimants by

centralizing the claims within one designated forum. *See, e.g., Motlow v. Southern Holding & Sec. Corp.*, 95 F.2d 721, 725-26 (8th Cir. 1938) (“Experience has demonstrated that, in order to secure an economical, efficient, and orderly liquidation and distribution of the assets of an insolvent corporation for the benefit of all creditors and stockholders, it is essential that the title, custody, and control of the assets be entrusted to a single management under the supervision of one court. [] This should particularly be true as to proceedings for the liquidation of insolvent insurance companies[.]”).

[18] The relevant provisions of Indiana’s Insurance Code at issue here are not “matters of procedure[;]” they are substantive laws restricting the judiciary’s exercise of its jurisdiction over an industry that is legislatively regulated and controlled. *Church*, 189 N.E.3d at 591. The statutes at issue reflect “clear legislative policy” to manage the rights of claimants with respect to insolvent insurers and are not statutes that merely control the “judicial dispatch of litigation.” *Id.* As they establish predominately substantive rights and protections, Indiana Code sections 27-9-4-3(c) and 27-9-3-12(b) take precedence over Trial Rule 19. As a result, AES Indiana is mandated to file its claim against Home in the New Hampshire liquidation proceeding.¹

¹ Because we conclude that Indiana Code sections 27-9-4-3(c) and 27-9-3-12(b) are predominantly substantive in nature and trump the application of Trial Rule 19, we do not address whether Home is a necessary party for purposes of Trial Rule 19 and whether the federal full faith and credit provision and comity principles apply to the Liquidation Order.

CONCLUSION

[19] Based on the foregoing, we conclude that the trial court properly dismissed AES Indiana's Complaint, according full faith and credit to an out-of-state Liquidation Order pursuant to Indiana Code sections 27-9-4-3(c) and 27-9-3-12(b).

[20] Affirmed.

[21] Bailey, J. and Vaidik, J. concur