

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gail and Larry Hicks,
Appellants-Plaintiffs,

v.

American Family Mutual
Insurance Company, S.I.,
Appellee-Defendant.

December 15, 2023

Court of Appeals Case No.
23A-CT-1263

Appeal from the Lake Superior
Court

The Honorable Calvin D.
Hawkins, Judge

Trial Court Cause No.
45D02-2007-CT-727

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

- [1] Gail Hicks was involved in a vehicular collision with a vehicle insured by American Family Mutual Insurance Company, after which Gail and Larry Hicks sued American Family and its insured driver. After a series of filings, the trial court granted judgment on the pleadings in the Hickses' favor; however, the trial court subsequently granted American Family's motion to correct error. After the trial court denied American Family's motion for summary judgment, this court accepted the issue for interlocutory appeal and concluded that the Hickses lacked standing to sue American Family and that summary judgment should be entered for American Family. The Hickses moved for judicial estoppel, claiming that the order granting them judgment on the pleadings had not been vacated and thus conflicted with the summary-judgment order. The trial court denied their motion. On appeal, the Hickses contend that the trial court abused its discretion in denying that motion. We disagree and affirm.

Facts and Procedural History

- [2] In July of 2020, after a vehicular accident, the Hickses sued American Family and its insured, Keith Head. *Am. Fam. Mut. Ins. Co., S.I. v. Hicks*, 2022 WL 351092, at *1 (Ind. Ct. App. Feb. 7, 2022), *trans. denied* (“*Hicks I*”). As part of that suit, the Hickses alleged that American Family “had a legal responsibility to, in good faith, settle the complete claim[,]” which the Hickses claimed it had not done and therefore caused them harm. *Id.* The Hickses alleged that

American Family could be liable “for the purposes of third party beneficiaries” by virtue of Head’s insurance policy. *Id.*

[3] On December 7, 2020, after a series of motions and responses, the trial court entered judgment on the pleadings in favor of the Hickses. On January 5, 2021, American Family moved to correct error and to enter a final appealable order. The next month, the trial court held a hearing on American Family’s motion and subsequently granted American Family’s motion to correct error but did not enter a final appealable order. Because this order was not final and appealable, American Family filed a motion to enter final judgment on February 21, 2021, which the Hickses opposed.

[4] On May 18, 2021, after having received no ruling on its motion to enter final judgment, American Family moved for summary judgment, “arguing that because the Hickses were not parties to Head’s insurance contract and were not third-party beneficiaries under the insurance policy, they have no basis for their breach-of-contract, bad-faith, or punitive-damages claims.” *Id.* at *2. The trial court conducted a hearing on American Family’s summary-judgment motion, after which it denied the motion; however, it certified the matter for interlocutory appeal, and we accepted jurisdiction. *Id.*

[5] In that appeal, American Family argued that the trial court had erred in denying its motion for summary judgment. *Id.* Relying on the Indiana Supreme Court’s decision in *Cain v. Griffin*, 849 N.E.2d 507, 515 (Ind. 2006), in which the Court determined that “a third-party beneficiary cannot sue an

insurer in a tort action for the insurer’s failure to deal in good faith with a third-party beneficiary[.]” we concluded that the trial court had erred in denying American Family’s summary-judgment motion. Specifically, we concluded that “the Hickses cannot sue American Family directly on a claim that American Family [had] failed to negotiate a settlement with the Hickses in good faith regardless of whether they qualify as third-party beneficiaries” and “American Family [was] therefore entitled to judgment as a matter of law[.]” *Hicks I* at *3. The Hickses unsuccessfully both sought transfer to the Indiana Supreme Court and petitioned for a writ of *certiorari* from the United States Supreme Court. *Am. Fam. Mut. Ins. Co., S.I. v. Hicks*, 190 N.E.3d 925 (Ind. 2022); *Hicks v. Am. Fam. Ins. Co., S.I.*, 143 S. Ct. 447 (2022).

[6] On February 22, 2023, the Hickses moved for judicial estoppel, claiming that the December 7, 2020 order granting their motion for judgment on the pleadings had not been vacated and thus conflicted with the trial court’s February 7, 2022 summary-judgment order. On February 26, 2023, the trial court granted the Hickses’ motion. Less than two weeks later, American Family filed a motion to reconsider, to correct error, and for sanctions, noting that the Hickses still had no standing to seek relief against it and that the trial court’s summary-judgment order remained final. The trial court scheduled a hearing for May 18, 2023.

[7] At the hearing, the trial court heard argument on the various pending motions. At the hearing’s conclusion, the trial court orally (1) reaffirmed its summary-judgment order in favor of American Family; (2) denied the Hickses’ motion for

judicial estoppel; (3) denied American Family’s motion for sanctions; and (4) confirmed that its orders were final judgments. On July 19, 2023, the trial court entered its final order consistent with its oral rulings.

Discussion and Decision¹

[8] The Hickses appeal from the trial court’s order granting American Family’s motion to correct error and concluding that they are not entitled to judicial estoppel. “The standard of appellate review of trial court rulings on motions to correct error is abuse of discretion.” *Paragon Fam. Rest. v. Bartolini*, 799 N.E.2d 1048, 1055 (Ind. 2003). “An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.” *Pickett v. State*, 83 N.E.3d 717, 719 (Ind. Ct. App. 2017), *trans. denied*.

[9] The Hickses argue that they are entitled to judicial estoppel based on American Family’s “multiple, contradictory, and confusing pleadings on October 9, 2020[.]” Appellant’s Br. p. 19. Specifically, the Hickses assert that these pleadings demonstrate “American Family’s intent to knowingly and intentionally make a misrepresentation” to the trial and appellate courts when American Family “purposefully did not reveal to the appellate court in [*Hicks I*] that there was a judgment that had not been vacated in the trial court.”

¹ American Family moved to strike a section of the Appellants’ Appendix, and corresponding portions of the brief, based on an affidavit having been filed after the completion of the Clerk’s record. This motion, however, is moot because we have disposed of this case without consideration of that affidavit.

Appellant's Br. p. 20. Based on our decision in *Hicks I*, however, we are unconvinced.

[10] Instead, we conclude that the trial court did not abuse its discretion in granting American Family's motion to correct error and consequently denying the Hickses' motion for judicial estoppel because the Hickses lack standing to seek relief against American Family directly. In *Hicks I*, we noted that

in *Cain*, the Indiana Supreme Court [held] that "a third-party beneficiary cannot sue an insurer in a tort action for the insurer's failure to deal in good faith with a third-party beneficiary." *Id.* at 515. While the Hickses argue on appeal that their claims against American Family are contractual in nature, a plain reading of their claims against American Family demonstrates that by suing American Family, they are seeking to recover damages directly from American Family. Such claims fall under the type of direct claim that was disallowed by *Cain*.

Hicks I at *3. We determined that the Hickses could not "sue American Family directly on a claim that American Family [had] failed to negotiate a settlement with the Hickses in good faith regardless of whether they qualify as third-party beneficiaries." *Id.* at *3. If the Hickses lack standing to bring claims directly against American Family, then it follows that they lack standing to seek judicial estoppel to enforce those claims. As a result, we cannot say that the trial court abused its discretion in granting American Family's motion to correct error and consequently denying the Hickses' motion for judicial estoppel.

[11] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.