IN THE COURT OF APPEALS OF IOWA

No. 2-712 / 11-1924
Filed October 3, 2012

DENNIS LANGWITH and BEN LANGWITH, Individuals,
Plaintiffs-Appellants,

vs.

AMERICAN NATIONAL GENERAL INSURANCE COMPANY, a Corporation, AMERICAN NATIONAL PROPERTY AND CASUALTY CO., a Corporation, JANET FITZGERALD, an Individual, both d/b/a AMERICAN NATIONAL JANET FITZGERALD INSURANCE SERVICES,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

The Langwiths appeal from the grant of summary judgment in favor of the insurer and its agents. **AFFIRMED.**

John R. Hearn, Des Moines, and Patrick B. White of White Law Office, P.C., Des Moines, for appellant.

Karl T. Olson of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for appellees American National General Insurance Co. and American National Property and Casualty Co.

John F. Lorentzen and Mitchell R. Kunert of Nyemaster Good, P.C., Des Moines for appellee Janet Fitzgerald.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

The insureds, Dennis and Ben Langwith, appeal from the second grant of summary judgment in favor of the insurer and its agents. After the first order granting summary judgment, the Iowa Supreme Court issued a ruling that expanded the potential liability of the agents, and remanded to the district court for trial. *Langwith v. Am. Nat'l Gen. Ins. Co.* 793 N.W.2d 215, 217 (Iowa 2010). Before trial, the legislature enacted a statute abrogating *Langwith* and the insurers filed a second motion for summary judgment. The district court again granted summary judgment. The Langwiths' appeal was transferred by the supreme court to this court.

We review the grant of summary judgment for correction of errors of law. *Frontier Leasing Corp*. *v*. *Links Eng'g*, *LLC*, 781 N.W.2d 772, 775 (Iowa 2010).

Background facts were set forth in the first appeal:

> [Janet] Fitzgerald is a self-employed captive agent for American National doing business under the name of American National Janet Fitzgerald Insurance Services. Prior to the events giving rise to this lawsuit, Dennis and his wife, Susan Langwith (hereinafter the Langwiths), had purchased substantially all of their insurance through Fitzgerald. During this time, they had consistently carried an automobile liability insurance policy with limits of $250,000 and an umbrella policy with $3,000,000 limits, both issued by American National. These policies also covered the Langwiths' two children, including Ben.
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> In December 2003, Ben's driver's license was suspended, which prompted American National to cancel Ben's coverage under the automobile liability policy. American National also sought to cancel the umbrella policy, but did not do so after Dennis and Susan signed a form agreeing to a driver exclusion for Ben. (This exclusion precluded coverage under the umbrella policy for any insured for any loss sustained while the vehicle was being operated by Ben.) When Ben's driver's license was reinstated, Susan spoke with Fitzgerald regarding insurance coverage for Ben. As a result of that conversation, Fitzgerald procured a high-risk policy from American National that covered Ben when driving the Langwiths'

> vehicles. This policy had limits of $250,000. The Langwiths assumed Ben was once again covered by the umbrella policy since Ben's driver's license had been reinstated and he had obtained the required underlying liability coverage. Contrary to this understanding, the driver exclusion for Ben remained on the Langwiths' umbrella policy.
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> On July 16, 2006, Ben was in an accident when driving a Chevrolet Suburban titled in Dennis's name. Corey Shannon, a passenger in Ben's vehicle, was severely injured. Shannon sued Ben based on Ben's alleged negligent operation of the Suburban, and he sued Dennis under the owner-liability statute. *See* Iowa Code § 321.493 (2005) (imposing liability on the owner of a vehicle for damages caused by a consent driver). American National acknowledged coverage for these claims under the automobile liability policy issued to the Langwiths and has provided a defense to Dennis and Ben in the Shannon lawsuit pursuant to its obligations under this policy. American National has denied any liability under the umbrella policy, however, based on the driver exclusion for Ben.

Langwith, 793 N.W.2d at 217.

The district court granted Janet Fitzgerald's motion for summary judgment on the ground that Fitzgerald had no duty to advise Dennis and Susan Langwith with respect to umbrella coverage on their son, Ben, or with respect to avoiding Dennis's vicarious liability for Ben's negligent driving. In reaching this conclusion, the court relied on settled Iowa law restricting the obligation of insurance agents to their clients. *See Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457, 464–65 (Iowa 1984); *Collegiate Mfg. Co. v. McDowell's Agency, Inc.*, 200 N.W.2d 854, 857–58 (Iowa 1972).

The Langwiths appealed and, in that first appeal, the supreme court overturned *Sandbulte* and recognized an expanded duty for insurance agents:

> [W]e hold that it is for the fact finder to determine, based on a consideration of all the circumstances, the agreement of the parties with respect to the service to be rendered by the insurance agent and whether that service was performed with the skill and knowledge normally possessed by insurance agents under like

> circumstances. Some of the circumstances that may be considered by the fact finder in determining the undertaking of the insurance agent include the nature and content of the discussions between the agent and the client; the prior dealings of the parties, if any; the knowledge and sophistication of the client; whether the agent holds himself out as an insurance specialist, consultant, or counselor; and whether the agent receives compensation for additional or specialized services.
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> The client bears the burden of proving an agreement to render services beyond the general duty to obtain the coverage requested.

Langwith, 793 N.W.2d at 222-23 (citations and footnotes omitted). The supreme court consequently reversed the district court's summary judgment in favor of the defendants, stating:

> We conclude the record shows a genuine issue of material fact with respect to the plaintiffs' first claim of negligence, namely, that Fitzgerald should have told the Langwiths that the driver exclusion remained on the umbrella policy. A fact finder could conclude from Susan's inquiry regarding "what [they] could do about Ben" that she was seeking Fitzgerald's "professional guidance" regarding "liability coverage that [would] protect [ ] him and [the Langwiths]," as Susan testified. A fact finder could also conclude that Fitzgerald understood or should have understood the nature of this request and that she responded by finding an automobile liability policy to insure Ben. Accordingly, a fact finder could find that the parties had an implied agreement that Fitzgerald would advise the Langwiths with respect to the liability coverage that could or should be put in place to protect Ben and his parents, including umbrella liability.

Id. at 225-26. The case was remanded for further proceedings. *Id.* at 228.

In response to the expansion of potential liability for insurance companies, and before the trial on remand took place, the Iowa Legislature added a new subsection to Iowa Code section 522B.11. *See* 2011 Iowa Acts ch. 70, § 45 (codified at Iowa Code § 522B.11(7) (Supp. 2011)). New subsection seven now provides, "the holding of *Langwith* is abrogated to the extent that it overrules *Sandbulte* and imposes higher or greater duties and responsibilities on insurance

producers than those set forth in *Sandbulte*."[1] The new subsection also states that "[u]nless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those duties and responsibilities set forth in *Sandbulte*." *Id.*

Fitzgerald filed a second motion for summary judgment. The district court again granted the defendants summary judgment and the Langwiths again appeal. They claim the court erred in applying section 522B.11(7) retrospectively. The Langwiths contend "the notion that laws should not look back and adversely affect accrued rights or prior conduct is deeply engrained in American jurisprudence." Be that as it may, the Langwiths' suit here depended upon the supreme court *expanding* the duty owed by an insurance agent, which it did in *Langwith*. The legislature restored the status quo in enacting section 522B.11(7), and in doing so did not "adversely affect accrued rights." *Cf*. *Phi Delta Theta v*. *Univ*. *of Iowa*, 763 N.W.2d 250, 267 (Iowa 2009) (refusing to apply law that limited the previously recognized right of a person to seek compensation from a state employee); *Moose v*. *Rich*, 253 N.W.2d 565, 571-72 (Iowa 1977) (holding legislation that limited the common law right to maintain a cause of action against a co-employee would not be applied retrospectively).

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[1] To "abrogate" means "to abolish, do away with, or annul." American Heritage College Dictionary 5 (4th ed. 2004). To "annul" means to "make or declare void or invalid; nullify." American Heritage College Dictionary 58. "[W]here a common law principle is abrogated, its existence is destroyed both as to past actions and pending proceedings." 1A *Sutherland Statutory Construction* § 23.34 (7th ed., Westlaw updated through August 2012). "If a statute reaffirms existing law, it is doubtful any innovations were intended." 2B *Sutherland Statutory Construction* § 50:5.

The duty an insurance agent owes to her client was governed by *Sandbulte* when the Langwiths' petition was filed. And as a result of the legislation, which abrogated the expanded duty recognized in *Langwith I*, *Sandbulte* continued to govern on remand. *Cf*. *Pitts v*. *Farm Bureau Life Ins*. *Co*., 818 N.W.2d 91, 99-100 (Iowa 2012) (stating *Sandbulte* and the statute "address *what* duties an insurance agent owes the insured"). The statute thus did not take away substantive rights previously possessed and the cases relied upon by the appellants are inapplicable.

In *Sandbulte*, an insurance agent's "general duty is the duty to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." 343 N.W.2d at 464. This duty could only be expanded "when the agent holds himself out as an insurance specialist, consultant or counselor and is receiving compensation for consultation and advice apart from premiums paid by the insured." *Id.* This is the standard applied by the district court in granting summary judgment in favor of the defendants. Finding no error, we affirm.

AFFIRMED.