IN THE COURT OF APPEALS OF IOWA

No. 6-682 / 05-1696
Filed November 30, 2006

PROGRESSIVE INSURANCE COMPANY,
Plaintiff-Appellee,

vs.

TODD REED and RAM AUTOMOTIVE, INC.,
d/b/a ADVANTAGE CHEVROLET, BRIAN MARTIN, JEANETTE MARTIN,
Defendants-Appellees,

GENERAL CASUALTY INSURANCE COMPANY,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

General Casualty Insurance Company appeals the district court's ruling on cross-motions for summary judgment. **AFFIRMED AND REMANDED WITH INSTRUCTIONS.**

Philip H. Dorff of Hopkins & Huebner, P.C., Des Moines, for appellant.

Joe Barron and Scott J. Beattie of Peddicord, Wharton, Spencer & Hook, LLP, Des Moines, for appellee Progressive Insurance Company.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

An insurance company asks us to address the following contentions: (1) whether coverage was excluded based on the execution of a release; and (2) if coverage was not excluded, whether the amount to be paid should be a proportion of certain statutorily prescribed minimums or a proportion of the policy limits. We affirm and remand.

I. Background Facts and Proceedings

Todd Reed test drove a pickup truck from a dealership known as RAM Automotive. Before he began the test drive, he and the dealership's manager signed a "Customer Test Drive Release." During the test drive, a trailer Reed was pulling detached from the pickup and struck another car.

At the time of the accident, RAM Automotive was insured by General Casualty Insurance Company and Reed was insured by Progressive Insurance Company. The companies questioned their obligations to provide coverage for the accident. Ultimately, Progressive filed a petition for declaratory judgment to obtain resolution of the coverage issue. Progressive alleged it had no duty to defend or indemnify Reed because its policy served as "excess" to the primary coverage provided by General Casualty. General Casualty responded that the release Reed signed barred coverage under its policy.

The insurance companies submitted the issues to the district court on cross-motions for summary judgment. Both companies agreed that their policies contained clauses excluding coverage for contractual obligations, as well as clauses that limited coverage to amounts in excess of other insurance.

The district court first considered the effect of the release signed by Reed. The court concluded the release did not trigger General Casualty's contract exclusion. The district court next considered the effect of the excess clauses in both policies. The court concluded that the clauses were "mutually repugnant," requiring proration of the losses between the two insurers. The court's disposition was as follows: "Progressive and General Casualty must share responsibility for the costs of Reed's defense and any damages assessed against him pro rata, based on their combined policy limits."

Both insurers appealed, but Progressive later dismissed its appeal.

II. Contract Exclusion; Effect of Release

General Casualty's policy contained an exclusion for "[c]ontractual obligations," defined as "[l]iability resulting from any agreement by which the 'insured' accepts responsibility for the 'loss.'"[1] General Casualty argues that the test drive release triggered this contract exclusion. The release stated in pertinent part:

> I will return the vehicle in the same condition as I left in and will be responsible for all damages made to the vehicle. I have adequate insurance to cover any physical damage or liability arising out of my operation of the vehicle.

The district court concluded the release language did not expressly obligate Reed to hold RAM Automotive harmless and to accept responsibility for the

[1] The parties do not dispute that this is the key language. Therefore, we will use it. We note, however, that the insurance policy was not included in the summary judgment record and the policy contained in the Appendix is numbered and lettered differently.

loss.[2] We review this conclusion for errors of law. *Green v. Racing Ass'n of Cent. Iowa*, 713 N.W.2d 234, 238 (Iowa 2006).

A release is defined as "[t]he relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced." *Korsmo v. Waverly Ski Club*, 435 N.W.2d 746, 748 (Iowa Ct. App. 1988) (citing Black's Law Dictionary 1453 (4th ed. 1968)). The parties agree the release is a contract. *Stetzel v. Dickenson*, 174 N.W.2d 438, 439 (Iowa 1970) ("A release is a contract, and its validity is governed by the usual rules relating to contract."). The parties also appear to agree that "the insured" in General Casualty's policy is Reed rather than RAM Automotive.[3] *Cf. Aid Ins. Co. (Mut.) v. United Fire & Cas. Co.*, 445 N.W.2d 767, 771 (Iowa 1989) (essentially rejecting argument that driver of dealership's vehicle was not an insured under dealership's insurance policy); *Union Ins. Co. (Mut.) v. Iowa Hardware Mut. Ins. Co.*, 175 N.W.2d 413, 417 (Iowa 1970) (same). The only disagreement relates to whether, by signing the release, Reed "accept[ed] responsibility for the loss" within the meaning of General Casualty's policy exclusion for contractual obligations. On this question, we believe the release language is ambiguous. *See Pedersen v. Bring*, 254 Iowa 288, 294, 117 N.W.2d 509, 513 (1962) ("Ambiguity appears when a genuine

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[2] The court also noted that Progressive's policy contained a similar contract exclusion. The court stated: "Furthermore, because Reed did not accept responsibility for the injuries suffered by [the driver of the other vehicle], the 'liability assumed' exclusion contained in Progressive's policy also does not come into effect."

[3] At oral argument, counsel for General Casualty suggested that a customer of RAM Automotive would not be considered "an insured" under its policy. Counsel later conceded that General Casualty was not pursuing this argument, as it had not previously been raised.

doubt appears as to the meaning of a contract."). On the one hand, the release could simply be read as a representation that Reed had insurance. This is Progressive's contention. On the other hand, the release could be read to mean that Reed accepted responsibility for the loss, thereby effectively holding the dealership harmless. This is General Casualty's contention. Both readings are reasonable and we believe "a genuine uncertainty exists concerning which of [the] two reasonable interpretations is proper." *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001) (citation omitted). Under these circumstances, the contract is to be construed against the party who drafts or furnishes the instrument. *Kinney v. Capitol-Strauss, Inc.*, 207 N.W.2d 574, 577 (Iowa 1973). This would be RAM Automotive and its insurer, General Casualty. *See Bashford v. Slater*, 250 Iowa 857, 866, 96 N.W.2d 904, 909 (1959). Accordingly, we accept the reading of the release advocated by Progressive; the release assured RAM Automotive that Reed had damage and liability insurance but did not obligate Reed to "accept responsibility for the loss." Based on this reading, we are persuaded that the district court did not err in concluding "the release form signed by Reed does not exclude General Casualty from having a duty to defend or indemnify Reed."

III. Pro Rata Liability

As noted, both insurance polices contained clauses limiting coverage if there was other insurance. General Casualty does not challenge the district court's conclusion that in such a situation, the clauses are mutually repugnant and the loss is prorated between the insurers. *AID Ins. Co.*, 445 N.W.2d at 769 (citing *Union Ins. Co.*, 175 N.W.2d at 418). General Casualty only appeals "the calculation of prorated shares."

The district court did not make this calculation but cited with approval a recent Iowa Supreme Court decision that prescribed a proration method. *See Federated Ins. v. Iowa Mut. Ins. Co.*, 659 N.W.2d 207, 210 (Iowa 2003). General Casualty argues we should follow the method in *Federated*, which would allow its pro rata share of liability to be calculated based on statutorily prescribed minimums rather than its policy limit of $1,000,000. Progressive counters that the *Federated* proration method is not mandated and we should follow an Indiana opinion that apportioned liability based on the limits set forth in the policy. *See Indiana Ins. Co. v. Federated Mut. Ins. Co.*, 415 N.E.2d 80, 89 (Ind. Ct. App. 1981).

In light of *Federated*, we see no reason to look to Indiana law. *Federated* involved virtually identical facts. There, a car dealership's escape clause limited liability to the "compulsory or financial responsibility law limits." *Federated*, 659 N.W.2d at 208. The court looked to this language in prorating the insurers' obligations, even though the language was contained within a clause found to be mutually repugnant to the policy language in the driver's policy. The court then looked to one of our financial responsibility laws, Iowa Code section 321A.21, and determined that the statutory limit was $40,000. *Id*. The personal auto liability policy issued to the test driver had a limit of $300,000 per accident. *Id*. The court combined these policy limits to arrive at a total of $340,000. *Id*. at 209. The court then approved a calculation apportioning a settlement amount of $265,000 and concluded that each carrier was responsible for 77.94 percent of its policy limits. *Id*. at 210.

As in *Federated*, General Casualty's policy restricts coverage based on "the compulsory or financial responsibility law limits." The statutory limit now is $20,000 for bodily injury or death of one person in any one accident.[4] Iowa Code § 321A.21(2)(b) (2005).[5] Given the language of General Casualty's policy and the language of *Federated*, we conclude $20,000 is the appropriate limit for General Casualty.

Turning to the calculation, Progressive's policy limit is $500,000. This figure must be added to the $20,000 figure we adopt for General Casualty, to arrive at a combined policy limit of $520,000. The parties agree that Reed and the injured driver reached a settlement of $180,000, but this fact is not in our record. Nor is there a calculation of the prorated obligations or an entry of judgment in those amounts. For these reasons, we affirm the district court's summary judgment ruling but remand with instructions to prorate the obligations in a manner consistent with this opinion and to enter judgment in this sum. *See Union Ins. Co.*, 175 N.W.2d at 419.

AFFIRMED AND REMANDED WITH INSTRUCTIONS.

[4] The parties appear to agree that the statutory limits for injury to one person apply.

[5] Progressive suggests, in the alternative, that the amount used to calculate General Casualty's liability should be the amount prescribed by Iowa Code section 322.4(8), which requires automobile dealers to have financial liability coverage up to $100,000 per person and $300,000 per occurrence. *See* Iowa Code § 322.4(8). The Iowa Supreme Court did not rely on this statutory provision in *Federated*. Therefore, neither do we.