IN THE COURT OF APPEALS OF IOWA

No. 7-336 / 06-1794
Filed June 27, 2007

STACEY A. BARTELS, RANDALL L. BARTELS, STORMY M. YOERGER, and ASHLEY A. YOERGER,
Plaintiffs-Appellants,

vs.

WISCONSIN MUTUAL INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Dubuque County, Margaret L. Lingreen, Judge.

Plaintiffs-appellants appeal the district court's summary judgment ruling dismissing their claim for declaratory judgment. **AFFIRMED.**

Christopher Stombaugh and Sheila Stuart Kelley of Kopp, McKichan, Geyer, Skemp & Stombaugh, L.L.P., Platteville, Wisconsin, for appellants.

Chadwyn Cox of Reynolds & Kenline, L.L.P., Dubuque, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

Plaintiffs-appellants appeal the district court's summary judgment ruling dismissing their claim for declaratory judgment. They argue Iowa law should apply in their action against Wisconsin Mutual Insurance Company (appellee) for underinsured motorist coverage (UIM). We affirm.

I. Background Facts and Proceedings

While waiting at a stoplight in Dubuque, Stacey Bartels was struck from behind by another vehicle. Bartels was injured as a result of the collision. The vehicle Bartels was driving was insured by appellee. Bartels, along with her husband and children, filed suit against the driver and owner of the other vehicle and appellee. They eventually reached a settlement with the driver and owner in the amount of $41,000, $9,000 short of the defendants' liability policy coverage limit. Appellants continued with their suit against appellee for UIM.

Appellants are all residents of Wisconsin. The vehicle Bartels was driving is normally kept at appellants' home in Wisconsin. Appellee is an insurance company headquartered in Madison, Wisconsin. It is not authorized to do business in Iowa and does not underwrite insurance in Iowa. Appellants purchased the insurance policy in Wisconsin, from an insurance agent located in Wisconsin. Under Wisconsin law, plaintiffs cannot pursue a claim for UIM until the tortfeasor's liability coverage is exhausted. *Danbeck v. American Family Ins. Co.*, 629 N.W.2d 150, 157 (Wis. 2001). The exhaustion principle, however, does not apply in Iowa law. *See Estate of Rucker v. National Gen. Ins. Co.*, 442 N.W.2d 113, 117 (Iowa 1989). Instead,

> the injured party who settles with a tortfeasor's liability carrier shall be assumed to have received the policy limits of the tortfeasor's liability policy. . . [and may] recover the difference between the liability policy limit and the damages suffered, subject to the underinsured motorist policy limits.

Id.

The district court, using the significant relationship test described in section 188 of the Restatement (Second) of Conflict of Laws (1971), determined Wisconsin law should apply. It dismissed appellants' claim on summary judgment.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for correction of errors at law. *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* We may resolve a case on summary judgment when the only dispute concerns legal consequences flowing from undisputed facts. *Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006).

III. Merits

In this case, the only dispute is whether Iowa law or Wisconsin law applies. Appellants have argued that *Rucker* superseded *Cole* and should be interpreted as the state's public policy toward UIM and applied to every litigant in Iowa. There was, however, no conflict of law issue in *Rucker*. We therefore decline to apply that case here unless we determine Iowa law is indeed the applicable law.

Where state laws conflict, we use two rules set out in the Restatement (Second) of Conflict of Laws. *Gabe's Constr. Co., Inc. v. United Capitol Ins. Co.*, 539 N.W.2d 144, 146 (Iowa 1995); *Cole v. State Auto. & Cas. Underwriters*, 296 N.W.2d 779, 781 (Iowa 1980). First, we determine whether the parties themselves have determined what law is to apply. *Cole*, 296 N.W.2d at 781; Restatement (Second) of Conflict of Laws § 187. Second, if the parties have not determined what law applies, we apply the law of the jurisdiction with the most significant relationship to the transaction in dispute. *Cole*, 296 N.W.2d at 781; Restatement (Second) of Conflict of Laws § 188. In determining which jurisdiction has the most significant relationship to the transaction, we apply the following principles:

> (a) the needs of the interstate and international systems;
> (b) the relevant policies of the forum;
> (c) the relevant policies of other interested states and the relative interest of those states in the determination of the particular issue;
> (d) the protection of justified expectations;
> (e) the basic policies underlying the particular field of law;
> (f) certainty, predictability, and uniformity of result; and
> (g) ease in the determination and application of the law to be applied.

Restatement (Second) of Conflict of Laws §§ 6, 188. We take the following contacts into account:

> (a) the place of contracting;
> (b) the place of negotiation of the contract;
> (c) the place of performance;
> (d) the location of the subject matter of the contract; and
> (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.

Id. § 188(2).

Appellants argue Iowa law should apply for several reasons. First, the collision giving rise to this claim occurred in Iowa. Second, except for one doctor's appointment, all of Stacey Bartels' medical treatment occurred in Iowa. Third, Stacey Bartels was employed full-time in Iowa at the time of the accident. Fourth, she paid Iowa income tax and had, at one time, been an Iowa resident. Fifth, she frequently visits family who reside in Iowa. Sixth, she married her husband in Iowa, and her children were born in the state. With the exception that the vehicle and Stacey Bartels were frequently in Iowa, these are otherwise not the types of contacts we consider under section 188. *See id.* § 188(2) cmt. e.

Given the types of contacts we are to consider, we must conclude Wisconsin law should apply. *See id.* § 188(2) cmt. e, illus. 1. First, all appellants are residents of Wisconsin and were residents of that state at the time of the accident. Second, the insured vehicle is garaged in Wisconsin. Third, the insurance policy was purchased in Wisconsin from an agent located in Wisconsin. Fourth, appellee is incorporated and headquartered in Wisconsin. It is not authorized to do business in Iowa and does not underwrite insurance in Iowa. Fifth, appellants paid their premiums in Wisconsin, and any payments appellee would make to appellants would be delivered to their residence in Wisconsin. Finally, appellants can neither rely on *Rucker* nor point out other law for the proposition that Iowa public policy concerning UIM overrides the significant contacts test. The district court therefore properly granted appellee summary judgment. That ruling is affirmed.

AFFIRMED.