IN THE COURT OF APPEALS OF IOWA

No. 8-253 / 07-1531
Filed July 16, 2008

TRAVIS FUHRMANN,
Plaintiff-Appellee,

vs.

ROYCE M. MAJORS,
Defendant,

AMERICAN FAMILY INSURANCE COMPANY,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Douglas S. Russell, Judge.

Insurance company appeals the district court's award of $100,000 under policy's underinsured motorist endorsement. **REVERSED AND REMANDED**.

Ted J. Wallace, Davenport, for appellant.

Matthew G. Novak and Thad J. Collins of Pickens, Barnes & Abernathy, Cedar Rapids, for appellee.

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

EISENHAUER, J.

American Family Insurance Company appeals the district court's judgment requiring it to pay $100,000 in underinsured motorist coverage (UIM) to Travis Furhmann under Iowa law. We reverse and remand.

I. BACKGROUND FACTS AND PROCEEDINGS.

The case was submitted to the court without hearing based on the parties' stipulated factual record and trial briefs. Previously, a motion for summary judgment filed by American Family had been overruled with the court finding "Iowa law should apply to determine the amount of damages." The issue at trial was: "Is Plaintiff entitled to recover underinsured motorist coverage under the terms of the American Family Insurance Policy that was issued to his parents, Jayme and Debbie Fuhrmann?"[1]

In 2004, Furhmann lived with his parents in South Dakota, held a South Dakota driver's license, was attending school in South Dakota, was working part-time at his father's company, and was covered by his parents' South Dakota family car policy. Furhmann's parents purchased the insurance policy in South Dakota from an agent licensed to sell insurance only in South Dakota. The insured car was licensed in South Dakota and was principally garaged in South Dakota.

On October 1, 2004, Furhmann was driving the insured car in Iowa and was injured in an accident caused by Royce Majors, an Iowa resident. Majors

[1] American Family summarily argues the tortfeasor's vehicle does not meet the UIM endorsement's definition of "underinsured motor vehicle." Because this issue of contract interpretation was not ruled on by the trial court, it has not been preserved for our review. *See Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002).

had $100,000 in liability insurance which was paid to Furhmann to settle Majors' liability.[2] American Family consented to the settlement. American Family agrees Fuhrmann's damages exceed $200,000 and agrees the accident was Majors' fault. The district court awarded Furhmann $100,000, the policy's UIM limit.

II. STANDARD OF REVIEW.

Our standard of review is for correction of errors at law. Iowa R. App. P. 6.4. We will not set aside a bench trial decision unless "it was induced by an error at law." *Evans v. Benson*, 731 N.W.2d 395, 397 (Iowa 2007).

III. MERITS.

The Furhmann American Family policy provided for $100,000 in UIM coverage in an endorsement. American Family argues South Dakota law applies and under South Dakota law Furhmann is not entitled to UIM proceeds. South Dakota statutory law states underinsured coverage is limited to underinsured benefits "less the amount paid by [the tortfeasor's] liability insurer." *See* S.D. Codified Laws § 58-11-9.5 (2004). South Dakota considers this a "difference of limits" statute.[3] *See Gloe v. Union Ins. Co*., 694 N.W.2d 252, 257 (S.D. 2005). The American Family endorsement's provisions track the statutory law. Because the tortfeasor's [Majors] policy provided liability benefits in an amount identical to the UIM coverage purchased by Furhmann, under South Dakota law Furhmann is not entitled to UIM proceeds.

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[2] Majors is no longer a party in this case.

[3] Under South Dakota statutory law a policy holder buying underinsured motorist coverage in South Dakota cannot know whether it has any value until after an injury. Only after a comparison is made to the tortfeasor's policy limits will the insured be able to determine whether the purchased UIM coverage adds any value.

Under Iowa law, no deduction of the tortfeasor's liability payment is required, therefore, there is a conflict of laws: South Dakota would bar Furmann's claim and Iowa law would award UIM proceeds. *See Veach v. Farmers Ins. Co.*, 460 N.W.2d 845, 848 (Iowa 1990) (holding goal of UIM coverage is full compensation to the extent of injury).

Furhmann argues Iowa law applies because Iowa has the most significant relationships. Furhmann points out the accident occurred in Iowa and was caused by an Iowa driver. Additionally, the accident witnesses are Iowans and the initial medical care occurred in Iowa.[4] The district court agreed and concluded Iowa law required American Family to pay UIM proceeds to Furhmann.

The district court decision utilized the *tort* significant relationship test found in Restatement (Second) Conflict of Laws section 145 (1971). This is an error of law because "a claim for . . . UIM benefits is essentially a contractual one." *Hamm v. Allied Mut. Ins. Co*., 612 N.W.2d 775, 779 (Iowa 2000). "We determine choice-of-law issues in insurance policy cases by the intent of the parties or the most significant relationship test." *Gabe's Constr. Co. v. United Capitol Ins. Co*., 539 N.W.2d 144, 146 (Iowa 1995) (citing *Cole v. State Auto & Cas. Underwriters*, 296 N.W.2d 779, 781 (Iowa 1980)). Where, as here, the UIM endorsement lacks a specific choice of law clause, we look to the significant relationship factors

[4] Furhmann also argues a conflict of laws analysis is unnecessary under *Hall v. Allied Mut. Ins. Co*., 261 Iowa 1258, 158 N.W.2d 107 (Iowa 1968). We disagree. *Hall* was decided before the Iowa Supreme Court adopted the Restatement (Second) of Conflict of Laws (1971), in *Joseph L. Wilmotte & Co. v. Rosenman Bros*., 258 N.W.2d 317, 325-26 (Iowa 1977). The Iowa Supreme Court has not utilized the *Hall* analysis in any subsequent opinion.

listed in section 188 of the second Restatement. *See Gabe's*, 539 N.W.2d at 146. The contacts to be considered are:

> (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.

Restatement (Second) of Conflict of Laws § 188(2), 575.

Applying the contract significant relationship factors leads to the conclusion South Dakota law should apply. The insured vehicle was licensed and garaged in South Dakota. While American Family conducts business in Iowa, the policy was sold in a South Dakota transaction to South Dakota residents by a South Dakota agent in order to establish an insurer-insured relationship in South Dakota. *See Cole*, 296 N.W.2d at 782 (holding under section 188, Minnesota law applies where the insurance "policy was sold in a Minnesota transaction to a Minnesota resident by a Minnesota agent in order to establish an insurer-insured relationship in Minnesota").

Because we conclude South Dakota law applies and because South Dakota requires a deduction for the tortfeasor's liability payment, we reverse.[5] The case is remanded for entry of a ruling in conformance with this opinion.

REVERSED AND REMANDED.

[5] We find unpersuasive Furmann's argument Iowa law applies because it has the "better rule of law." Furmann cites no Iowa authority and the Minnesota authority relied upon is not current. *See Nodak Mut. Ins. Co. v. American Family Mut. Ins. Co*., 604 N.W.2d 91, 96 (Minn. 2000) (holding Minnesota has not placed any emphasis on "application of the better rule of law" in nearly twenty years).