

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002618-MR

CLARA YVONNE WITHERSPOON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KEN F. CONLIFFE, JUDGE
ACTION NO. 96-CI-005894

GRANGE MUTUAL CASUALTY
COMPANY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUDGEL, CHIEF JUDGE; BARBER, AND SCHRODER, JUDGES.

BARBER, JUDGE: Appellant, Clara Witherspoon, ("Witherspoon") seeks review of an order of the Jefferson Circuit Court granting summary judgment in favor of the Appellee, Grange Mutual Casualty Company, ("Grange"). Witherspoon alleged that Grange acted in bad faith and violated the Unfair Claims Settlement Practices Act. The sole issue on appeal is whether the trial court erred in determining that Ohio law applied to Witherspoon's claim. Finding no error, we affirm.

On December 12, 1992, Witherspoon and her husband, Charles, were in Norfolk, Virginia, visiting their son, John C.

Witherspoon, who was in the Navy. En route to a hockey game, the three were in a motor vehicle accident. John was driving his parents' car at the time, because he was more familiar with the area; Clara was riding in the back seat. Gerald Rice, the driver of the other car, was a resident of Ironton, Ohio. Grange was Rice's insurer and handled the claim out of its Portsmouth, Ohio office. Kentucky Farm Bureau was the Witherspoons' insurer. The Witherspoons' policy provided for underinsured motorist coverage.

On November 18, 1994, Clara Witherspoon filed a suit in Lawrence County, Ohio, where Rice resided. Rice and Kentucky Farm Bureau were named as defendants. Grange hired an Ohio attorney to defend Rice. On December 29, 1994, Grange, through the Ohio attorney, filed a Third-Party complaint against John C. Witherspoon, seeking contribution under Ohio law "against the other driver." On January 17, 1995, Kentucky Farm Bureau also filed a Third-Party Complaint against John C. Witherspoon. The case was set for trial on April 23, 1996. At a pretrial conference on April 15, 1996, Grange agreed to pay its policy limits of \$50,000 on behalf of Rice. The Ohio action subsequently proceeded to trial and a verdict was obtained against Kentucky Farm Bureau.

On October 9, 1996, Clara Witherspoon filed the within action in Jefferson Circuit Court against Grange and Kentucky Farm Bureau, alleging conspiracy; fraudulent, malicious, deceitful and intentional acts; insurance fraud under KRS 304.47-020(1)(c); violation of the Unfair Settlement Claims Practices Act, KRS 304.230; outrage and bad faith. In particular,

Witherspoon complained of the filing of the third-party complaints against John C. Witherspoon by Grange and Kentucky Farm Bureau; that Grange failed to offer policy limits until April 15, 1996 and that Kentucky Farm Bureau had attempted and conspired to deprive her of coverage under the respective policies. On April 27, 1999, the trial court entered summary judgment in favor of Grange, holding that Ohio law should apply to Witherspoon's bad faith claims against Grange; further, that under Ohio law, Pasipani v. Morton, 572 N.E.2d 234 (Ohio App., 1990), a third party has no cause of bad faith against the tortfeasor's insurance company:

Under Kentucky's choice of law rules, the Court should apply the law of the state which has significant contact with the issue presented before the Court. Foster v. Leggett, Ky., 484 S.W.2d 827, 829 (1972); Arnett v. Thompson, Ky., 433 S.W.2d 109, 113 (1968); Wessling v. Paris, Ky., 417 S.W.2d 259, 260-61 (1967).

In the instant case, the Plaintiff alleges that Grange committed bad faith by allowing its insured to file a third-party complaint. Grange is an Ohio corporation. Grange's insured is a resident of Ohio. The Third-Party Complaint was filed in an Ohio action. The sole contact with the Commonwealth of Kentucky is that it is the place of residence of the Plaintiff. The fact that Grange conducts business in Kentucky does not arise to significant contacts on the issue brought before this court. Accordingly, Ohio has significant contact with the Plaintiff's bad faith claims, and this Court will apply Ohio law to those claims.

In Ohio, a third party has no cause of action for bad faith against the tortfeasor's insurance company. Pasipani v. Morton, 572 NE 234, 235 (Ohio App. 1990). "A insurance company has a duty to act in good faith in settling claims and a breach of that duty will give rise to a cause of action by the insured. However, that duty runs only from

the insurer to the insured, not to third parties.”

The remaining claim against Kentucky Farm Bureau was subsequently settled. An agreed order of dismissal was entered on September 30, 1999. This appeal followed.

We review summary judgments de novo. Blevins v. Moran, Ky. App., 12 S.W.3d 698, 700 (2000). The Kentucky choice of law rule applicable to torts is that “if there are significant contacts – not necessarily the most significant contacts – with Kentucky, the Kentucky law should be applied. Foster v. Leggett, 484 S.W.2d 827 (1972); Bonnlander v. Leader National Insurance Co., Ky. App. 949 S.W.2d 618 (1996).

The issue in Foster was whether recovery was barred by Ohio’s guest statute. There, the appellee was domiciled in Ohio, but worked in Russell, Kentucky. The night before the accident, appellee had stayed in a room he kept at the Russell, Kentucky YMCA. The next morning, Appellee picked up appellant’s decedent at her home in Kentucky. The couple had planned to spend the day in Columbus, Ohio, and returned to Kentucky that same night. The accident occurred in Ohio, en route to Columbus. The high court held that recovery was not barred by Ohio’s guest statute, and that Kentucky law should apply, because contacts with Kentucky “were numerous and significant.” Id. at 829.

Witherspoon attempts to persuade us that significant Kentucky contacts exist in this case, because Witherspoon is a resident of Kentucky. Witherspoon contends that her journey began and ended in Kentucky, as did the tragic journey in Foster.

Although the Witherspoons were in Virginia visiting their son when the accident occurred en route to a hockey game, it is not apparent that they had traveled from, or intended to return to, Kentucky on the day of the accident.

Witherspoon attempts to bolster the significance of the Kentucky connection, by noting that her (former) husband and son (two principal lay witnesses) are residents of Kentucky; that she received medical treatment in Kentucky; that depositions concerning liability for the accident were taken in Kentucky; and that payments for damages and for deposition expenses, as well as letters, were sent by Grange "across the Kentucky state line." Witherspoons' *residence* is not at issue. It is not surprising that Witherspoon has family, doctors and a mailing address in Kentucky because she lives here. Those factors do not enhance or increase the contact with Kentucky in this case.

Witherspoon emphasizes that Grange writes insurance and transacts business in Kentucky. This case does not involve a Grange policy issued in Kentucky. This case involves allegations of bad faith arising out of a lawsuit filed in Ohio, against an Ohio insured, defended by an Ohio attorney, over an accident which occurred in Virginia. Nor does the fact that circuit court has personal jurisdiction over the parties require application of Kentucky law. Although a "State may . . . assume jurisdiction over the claims of plaintiffs whose principal contacts are with other States, it may not use this assumption of jurisdiction as an added weight in the scale when considering the permissible constitutional limits on choice of substantive law." Phillips

Petroleum Co. v. Shutts, 472 US 797, 821, 105 S.Ct. 2965, 86 L.Ed.2d 628, (1985).

We agree with the trial court that "[t]he fact that Grange conducts business in Kentucky does not arise to significant contacts *on the issue brought before this Court*. Accordingly, Ohio has significant contact with the Plaintiff's bad faith claims, and this Court will apply Ohio law to those claims." (emphasis added.) The order of the trial court granting summary judgment for Grange Mutual Casualty Company is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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