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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001246-MR

BILL FRED HAMILTON

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 02-CI-00141

MERIDIAN MUTUAL INSURANCE COMPANY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND McANULTY, JUDGES.

McANULTY, JUDGE. On February 5, 1996, the appellant, Bill Fred Hamilton (Hamilton), lost his home in Laurel County to fire. Like any wise homeowner, Hamilton had obtained insurance for his home, in this case from the appellee, Meridian Mutual Insurance Company (Meridian). For reasons that we shall explore below, Hamilton did not file suit against Meridian until February 5, 2002. After Meridian moved for summary judgment, the Laurel Circuit Court granted Meridian's motion and dismissed Hamilton's

suit as barred by a contractual period of limitation. Subsequently, Hamilton timely appealed to this Court.

As previously mentioned, fire extensively damaged Hamilton's home on February 5, 1996. Hamilton filed a claim with Meridian for the loss he had suffered. On April 8, 1996, Meridian sent a letter to Hamilton that requested information regarding the damage to the home and any personal property in the home. In reply, Hamilton sent a proof of loss to Meridian and claimed his loss to be \$210,350.00. However, Meridian sent a letter to Hamilton on May 13, 1996 and rejected Hamilton's proof of loss. Meridian offered to pay \$66,099.54 to cover the cost of home repair based on an estimate done by Paul Davis Systems. Meridian explained that Hamilton's proof of loss exceeded his policy limit of \$82,600.00 and it could not satisfactorily determine Hamilton's damages since he refused to let the Paul Davis representative inspect his personal property. On August 10, 1996, Meridian tendered to Hamilton a \$66,099.54 check to settle his claim. Subsequently, Hamilton rejected Meridian's offer and returned the check. In October of 1996, Hamilton began serving a federal prison sentence.

On August 10, 1998, after nearly two years, Hamilton, while still incarcerated, sent another letter to Meridian regarding his claim. On August 23, 1998, Meridian replied by

letter. Meridian once more offered \$66,099.54 to settle Hamilton's claim. Included in the letter, Meridian stated:

Lastly, Meridian Mutual Insurance Company is specifically reserving all of its rights under the policy of insurance that was in effect on 02/05/96. The contents of this letter and all actions taken by Meridian Mutual and its representatives now or in the future should not be interpreted as a waiver of any of these rights. In particular, Meridian Mutual specifically reserves the right to invoke condition number eight on page ten of your homeowner's policy which states; "no action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss."

On August 31, 1998, for unknown reasons, Meridian again sent the exact same letter to Hamilton. On September 13, 1998, Hamilton replied by letter and rejected Meridian's offer as insulting.

In his letter, Hamilton stated:

Further, at this time, in fact, no policy, contract or other agreement can be agreed upon while incarceration at a federal penitentiary is being conducted according to my attorney and the authorities at the Bureau of Prisons. So I will have to be released from prison before any action on this matter can take place.

Time passed and on December 7, 2000, Hamilton, while still incarcerated, sent a letter to Meridian in an attempt to solicit a higher settlement offer. On January 27, 2001, Meridian replied by letter and stated that Hamilton's contractual rights regarding his claim had expired and that

Meridian would take no further action regarding his claim. Once again, Meridian specifically reserved its rights under the policy and again stated that all actions taken by it or its representatives then and later should not be interpreted as a waiver of any of its rights.

As previously mentioned, Hamilton filed suit against Meridian in the Laurel Circuit Court on February 5, 2002. Meridian promptly moved for summary judgment citing the policy provision that all claims against it must be filed within one year of the date of loss. As noted above, the circuit court granted summary judgment and Hamilton appealed.

In his brief, Hamilton first argued that Meridian waived the one-year contractual period of limitation found in his homeowner policy. As mentioned above, Hamilton's policy contained a provision that all actions against Meridian must be filed within one year of the date of loss. Hamilton argues that Meridian waived this provision since Meridian continued to negotiate with him well after the one-year limitation period had run. Hamilton points to Meridian's letters of August 23, 1998 and August 31, 1998, in which Meridian offered \$66,099.54 to settle his claim.

Hamilton cites National Surety Marine Insurance Corp. v. Wheeler, Ky., 257 S.W.2d 573 (1953) and points out that a contractual period of limitation can be waived. Hamilton also

points out that Meridian never denied liability for his claim. Hamilton insists that Meridian's preservation-of-rights language found in its letters did not negate waiver because waiver may result from either words or actions of an insurer especially if the insurer recognizes the existence of continuing coverage. United States Fidelity and Guaranty Co. v. Miller, 237 Ky. 43, 34 S.W.2d 938 (1931) and Mutual Protective League v. Walker, 163 Ky. 346, 173 S.W. 802 (1915). Hamilton argues that by making an offer in its August 31, 1998 letter, Meridian by its actions recognized the existence of continuing coverage and intentionally waived the one-year limitation period. Thus, the circuit court erred in granting Meridian's motion for summary judgment.

Second, Hamilton argues that his incarceration acted as a legal disability that tolled the limitation period until he was released from prison. Hamilton argues that he was incarcerated from October 1996 to November 2001. Hamilton cites Munday v. Mayfair Diagnostic Laboratory, Ky., 831 S.W.2d 912 (1992) for the proposition that a legal disability tolls the running of a limitation period. Thus, even if Meridian did not waive the limitation period, the period did not start to run until he was released from prison in November 2001. Hamilton insists that incarceration is clearly a legal disability.

Meridian argues that its offer to settle Hamilton's claim that it made in its August 31, 1998 letter did not waive the one-year limitation period. Meridian quotes part of KRS 304.14-280 and argues that with this statute the General Assembly clearly intended for insurance companies to negotiate and attempt to settle claims without such negotiations being construed as a waiver of any insurance policy provision or a waiver of any defense an insurance company may have. Meridian insists that this statute implicitly overrules the cases Hamilton cites that support the proposition that an insurance company can waive a provision by negotiation.

Meridian relies heavily on Edmondson v. Pennsylvania National Mutual Casualty Insurance Company, Ky., 781 S.W.2d 753 (1989). In Edmondson, a client sued her former attorney for malpractice for allowing her action against an insurance company to become barred under a contractual period of limitation. The attorney argued that the insurance company had waived the limitation period when the insurance company extended settlement offers and acknowledged liability. Id. at 754. In all its letters to its client, the insurance company specifically reserved its rights and defenses found in the insurance contract. Prior to the expiration of the limitation period, the insurance company made a settlement offer of approximately \$17,000.00. Id. After the limitation period had run, the

attorney replied to the insurance company's offer; however, the insurance company stated the limitation period had run and it was no longer obligated to pay client's claim. Id. The Supreme Court of Kentucky held that the insurance company did not waive the contractual period of limitation nor was it estopped from asserting the limitation period as a defense. Id. at 756.

Although the insurance company in Edmondson did not extend a settlement offer after the expiration of the limitation period, Meridian argues that the holding in Edmondson applies to the case *sub judice*. Thus, Meridian did not waive the one-year limitation period nor was it estopped from asserting it.

Meridian argues that Hamilton's incarceration did not toll the one-year limitation period. Meridian argues that the case Hamilton relies on, Munday, supra, fails to refer to any specific legal disability. Furthermore, the General Assembly decided in 1970 that a person confined in a penitentiary was no longer considered disabled for the purpose of tolling statutes of limitations when it repealed KRS 413.310¹.

In his brief, Hamilton argued that Meridian was estopped from asserting the one-year limitation period. In his reply brief, Hamilton argues estoppel again but in greater detail. Hamilton distinguishes Edmondson from the case *sub judice*. He points out that in Edmondson the insurance extended

¹ Prior to being repealed, KRS 413.310 held that a prisoner was legally disabled for the purpose of tolling statutes of limitations.

a conditional offer to the client's attorney prior to the expiration of the contractual limitation period while in the case *sub judice* Meridian extended an unconditional offer to Hamilton himself after the limitation period had run. Hamilton points out that estoppel is different from waiver. While waiver requires intention, estoppel does not. Hamilton correctly states that estoppel is an equitable relief that protects a person who has relied to his detriment upon misleading conduct, acts or representations. Hamilton insists that Meridian was estopped from asserting the limitation period.

Hamilton also argues that implicit in every insurance contract is the obligation that the insurer will pay the amount to which it has admitted liability. Hamilton points out that Meridian admitted liability in the amount of \$66,099.54, insists that Meridian never tendered this amount and argues it robbed him of the opportunity to dispute the amount. Since Meridian breached the insurance contract, Hamilton argues it is estopped from asserting the limitation period.

Hamilton also argues that since Meridian was negotiating directly with him and not with an attorney, it lulled him into the belief that his claim would be settled without litigation. According to Hamilton, this belief and his belief that he could not file suit until he was released from

incarceration should estop Meridian from asserting the one-year limitation period.

Unfortunately, we are not persuaded by Hamilton's arguments. KRS 304.14-280 reads in pertinent part:

Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

. . .

(3) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

In light of KRS 304.14-280, Meridian's offer of \$66,099.54 on August 31, 1998, even though it was made after the one-year limitation period had expired, did not constitute a waiver of the said period. Hamilton argues that Meridian waived this limitation period because it never disputed liability. However, the Supreme Court held:

The mere fact that liability is not an issue, does not, per se, convert an offer of settlement into a binding contract for the amount of the offer. The viability of an offer is conditioned upon acceptance pursuant to its terms. . . . This is not an unconditional admission of liability but an admission of coverage limited by the provisions in the policy. It expressly reserves the policy conditions and defenses. It requires accepting the offer of settlement according to its terms. Regardless of whether coverage is disputed or admitted, an offer of settlement is just that. Absent estoppel there is no contract

principle, in insurance law or otherwise, converting an offer of settlement into a binding contract unless and until it is accepted in accordance with its terms.

Edmondson, Id. at 756.

Thus, the fact that Meridian did not dispute liability did not constitute a waiver of the one-year limitation period.

Hamilton of course argues estoppel as well. The five elements for estoppel are:

(1) Conduct, including acts, language and silence, amounting to a representation or concealment of material facts; (2) the estopped party is aware of these facts; (3) these facts are unknown to the other party; (4) the estopped party must act with the intention or expectation his conduct will be acted upon; and (5) the other party in fact relied upon this conduct to his detriment.

Howard v. Motorists Mutual Insurance Company, Ky., 955 S.W.2d 525, 527 (1997).

Hamilton fails to show the elements of estoppel. Hamilton filed his claim. Meridian requested information that Hamilton did not provide. Meridian tendered a \$66,099.54 check to settle Hamilton's claim. Hamilton firmly rejected the offer. Then he contacted Meridian in 1998, nearly two years after the one-year limitation period had expired. Meridian did not solicit this contact nor did it lull Hamilton into waiting nearly two years. Meridian then reiterated its original offer and specifically stated that it would consider no other payments and it would

withdraw its offer if not accepted within thirty days. Meridian stated specifically that it reserved all its rights under the contract specifically mentioning the one-year limitation period. Once again, Hamilton firmly rejected Meridian's offer. He specifically stated that his attorney told him he could not file suit until released from incarceration. Then at the end of 2000, he contacted Meridian again attempting to solicit a higher offer than \$66,099.54. Meridian then claimed Hamilton's claim was barred by the limitation period.

Meridian never made, by word or deed, a representation or concealment of a material fact. Absent this, Hamilton cannot credibly argue detrimental reliance. Without detrimental reliance, estoppel cannot be proved.

Hamilton argues his incarceration acted as a disability to toll the running of the limitation period but the case he cites does not support this proposition. National Surety Marine Insurance Corp. v. Wheeler, supra. It merely states in general that a legal disability may toll a statute of limitation. Nowhere does it state that incarceration is a legal disability. As stated earlier, the statute that did stand for this proposition was repealed in 1970. We find that Hamilton's incarceration did not toll the limitation period.

Thus, for the foregoing reasons, we affirm the Laurel Circuit Court's order of May 28, 2002 granting summary judgment.

BUCKINGHAM, JUDGE, CONCURS.

GUIDUGLI, JUDGE, CONCURS IN RESULT ONLY.

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