STATE OF MINNESOTA
IN COURT OF APPEALS
A10-608

Leisha Lee Perry,
As Trustee for the Heirs and Next of Kin of Jason Earl Henry, Decedent,
Appellant,

vs.

Zurich North American, Inc.,
Respondent.

Filed January 11, 2011
Affirmed
Stauber, Judge

Anoka County District Court
File No. 02CV088614

Robert Edwards, Robert N. Edwards, Chtd., Anoka, Minnesota; and

Scott Wilson, Shorewood, Minnesota (for appellant)

Peter G. Van Bergen, Tamara L. Novotny, Cousineau, McGuire, Chtd., Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Huspeni, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

This is an appeal from summary judgment in an underinsured motorist (UIM) claim in which the district court ruled that because the vehicle involved in the accident was licensed in California, California law and the California UM (uninsured motorist)/UIM coverage endorsement applies such that choice-of-law arguments need not be reached, and that under California law, no UM/UIM coverage is available. Appellant argues that (1) the district court erred by failing to apply the doctrine of equitable estoppel to prevent respondent-insurance company from taking advantage of its refusal to provide a copy of its insurance policy in a timely fashion and (2) the district court erred in declining to conduct a choice-of-law analysis because the presence of a contractual choice-of-law provision does not obviate the need for a choice-of-law analysis. We affirm.

FACTS

In January 2006, Jason Henry was killed in a single car accident in California. Henry was a passenger in a vehicle driven by Miguel Gonzales, an employee of Vestas American Wind (Vestas). Henry, who was employed by Vinco, Inc. of Forest Lake, Minnesota, a subcontractor for Vestas, was working in California on a Vestas jobsite. It is undisputed that Gonzales was acting within the scope of his employment at the time of the accident.

The vehicle involved in the accident had been rented by Vestas from Avis Rent-A-Car. The vehicle was licensed in California and principally garaged there. The vehicle

was insured under the terms of an insurance policy issued by respondent American Guarantee and Liability Insurance Company (American Guarantee). The policy afforded one million dollars in liability coverage limits and one million dollars in UIM coverage limits.

In late 2006, appellant Leisha Lee Perry, as trustee for the heirs and next-of-kin of Henry, retained an attorney to pursue a liability claim on behalf of Henry's minor child. Counsel for appellant contacted Vestas' attorneys, who advised appellant's counsel that Vestas was immune from suit due to the "exclusive remedy rule pertaining to workers' compensation." Vestas' attorneys further advised appellant's counsel that under California law, a third-party claim was barred under the exclusive remedy rule because Henry was a borrowed employee at the time of the accident.

After receiving Vestas' representations, counsel for appellant pursued a claim against Gonzales' personal automobile insurance, Famers Insurance Company (Farmers). After demand was made, Farmers tendered its $50,000 liability policy limits. In December 2007, counsel for appellant sent respondent a *Schmidt/Clothier* notice advising it of the settlement offer and providing them "30 days with which to make a decision as to whether you want to put in a claim for your subrogation interests." Counsel also requested a "complete copy of Vestas' corporate auto policy including the declarations page and any rental vehicle coverage endorsement and the underinsured motorist endorsement."

Respondent did not respond to the *Schmidt/Clothier* notice until July 2008, at which time it declined the request to disclose its policy. Respondent's July correspondence explained that:

> Vestas' policy was in fact primary on the vehicle because Vestas obtained Employee Hired Auto Coverage under its policy issued by Zurich. This type of coverage makes Vestas' policy the primary policy on vehicles rented by Vestas employees. There is no Uninsured Motorist Coverage in this situation. Vestas' policy covered Mr. Gonzales as the primary policy. In fact, his Farmers' policy would be excess to the Vestas' coverage. Uninsured coverage only applies as a first party coverage. Mr. Henry and his heirs are not entitled to Uninsured or Underinsured coverage because the claim against Mr. Gonzales and Vestas, it is based on third party liability and thus third party coverage.

On August 14, 2008, appellant obtained court approval for the wrongful death settlement with Farmers, and Gonzales and Farmers were released from any and all claims in October 2008. In the meantime, on September 19, 2008, appellant filed its complaint against Zurich North American, Inc., asserting a claim for underinsured motorist (UIM) benefits under Vestas' policy.[1] Respondent subsequently moved for summary judgment claiming that appellant's right to recover UIM benefits is controlled by California law and the California Uninsured Motorist Coverage Endorsement to its insurance policy. Respondent argued that appellant was not entitled to recover UIM benefits under respondent's policy because under California law, UIM coverage is not triggered by a single-vehicle accident.

[1] The complaint incorrectly identified the defendant as Zurich North American, Inc., but the actual policy at issue here was furnished by respondent American Guarantee.

Appellant argued that the Minnesota Endorsement to respondent's insurance policy and Minnesota UIM law should be applied because (1) Henry's heirs lived in Minnesota; (2) Henry, while living in California, was employed by a Minnesota company; and (3) Henry paid Minnesota taxes. Appellant also briefly argued that respondent should be equitably estopped from relying upon the California Endorsement because only respondent knew of the policy's language and endorsement at the time appellant agreed to settle with Gonzales.

On February 10, 2010, the district court granted respondent's motion for summary judgment. The court concluded that (1) because the vehicle involved in the accident was licensed in California, California law and the California UIM coverage endorsement apply; (2) under well-established law, California's UIM coverage is not triggered when there is only one vehicle involved in an accident, and it was undisputed that this case involved a single-motor-vehicle accident; and (3) a choice-of-law analysis was not necessary because it is applied only where either one state or another state's law could apply. Here, California law applied pursuant to the insurance policy's California Endorsement. This appeal followed.

D E C I S I O N

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal, this court reviews summary judgment by asking: (1) whether there are any genuine issues of material fact

and (2) whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

I.

Appellant maintains that the district court erred by failing to apply the doctrine of equitable estoppel. Appellant argues that the application of the doctrine was necessary to prevent respondent from taking advantage of its refusal to timely provide a copy of its insurance policy to appellant.

Equitable estoppel prevents a party from "taking unconscionable advantage of [its] own wrong by asserting [its] strict legal rights." *Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771, 777 (Minn. 2004). But it is also "an affirmative defense which must be raised in the pleadings or litigated at trial by the consent of the parties." *Spinnaker Software Corp. v. Nicholson*, 495 N.W.2d 441, 445 (Minn. App. 1993), *review denied* (Minn. Mar. 30, 1993); *see* Minn. R. Civ. P. 8.03. Here, appellant did not raise the issue in the pleadings, and although it was discussed briefly at the summary judgment hearing and in a posttrial memorandum, the district court did not address this issue. Therefore, we decline to consider the issue on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that a reviewing court generally considers only issues presented to and considered by district court).

II.

Appellant also maintains that the district court erred by failing to conduct a choice-of-law analysis, and that under a proper choice-of-law analysis, Minnesota law should apply to the UIM coverage issue. A district court's resolution of a choice-of-law

issue is a question of law, which this court reviews de novo. *Danielson v. Nat'l Supply Co.*, 670 N.W.2d 1, 4 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003).

A choice-of-law analysis is only necessary if there is a conflict of laws, which occurs when "the choice of one forum's law over the other will determine the outcome of the case." *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 604 N.W.2d 91, 93-94 (Minn. 2000). If there is a conflict and the law of either forum may be constitutionally applied, this court balances five choice-influencing considerations: (1) predictability of result; (2) maintenance of interstate order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law. *Danielson*, 670 N.W.2d at 6.

Respondent argues that the district court correctly concluded that a choice-of-law analysis was unnecessary because the insurance policy issued to Vestas contained a specific choice-of-law provision. We agree. It is well-established that general-contract principles govern the construction of insurance policies and that insurance policies are to be interpreted to give effect to the intent of the parties. *Nathe Bros. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 344 (Minn. 2000). "Minnesota traditionally enforces parties' contractual choice of law provisions." *Hagstrom v. Am. Circuit Breaker Corp.*, 518 N.W.2d 46, 48 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). Minnesota courts have consistently expressed a commitment to the rule "that the parties, acting in good faith and without an intent to evade the law, may agree that the law of either state shall govern." *Combined Ins. Co. of Am. v. Bode*, 247 Minn. 458, 464, 77 N.W.2d 533, 536 (1956); *see also Milliken and Co. v. Eagle Packaging Co.*, 295 N.W.2d 377, 380 n.1

(Minn. 1980); *Standal v. Armstrong Cork Co.*, 356 N.W.2d 380, 382 (Minn. App. 1984), *review denied* (Minn. Feb. 19, 1985); *see generally* Robert A. Leflar et al., *American Conflicts Law* § 147, at 414–49 (4th ed. 1986) (recognizing trend toward enforcing contractual choice-of-law provisions and citing case authority). If there is no choice-of-law provision in the contract, then a choice-of-law analysis is necessary. *See Cargill, Inc. v. Evanston Ins. Co.*, 642 N.W.2d 80, 89–90 (Minn. App. 2002) (indicating that before a choice-of-law analysis is performed, courts look to the contract to determine if the contract contains a choice-of-law provision), *review denied* (Minn. June 26, 2002).

Here, the insurance policy issued by respondent unambiguously states that the California Endorsement applies to vehicles licensed or principally garaged in California, and that the Minnesota Endorsement applies to vehicles licensed or principally garaged in Minnesota. The policy also provides all necessary coverage and complies with the applicable UIM statutes in both Minnesota and California. *See* Minn. Stat. § 65B.49, subd. 3a (2008); Cal. Ins. Code § 11580.2(a)(1) (West 2005). Thus, a choice-of-law analysis was unnecessary because the insurance policy contained a specific choice-of-law provision. Moreover, it is undisputed that the vehicle in the accident was licensed in California and principally garaged in California. Accordingly, the district court did not err in concluding that the California Endorsement and California law applied in this matter.

Affirmed.