

IN THE UTAH COURT OF APPEALS

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Val M. Ellison,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20080145-CA
v.)	
)	
Utah County and Hartford Life)	F I L E D
& Accident Insurance Company,)	(March 19, 2009)
)	
Defendants and Appellees.)	2009 UT App 72

Fourth District, Provo Department, 050402012
The Honorable James R. Taylor

Attorneys: Kenneth Parkinson and Elijah L. Milne, Provo, for Appellant
Kristin A. Van Orman and Jeremy G. Knight, Salt Lake City, for Appellee Utah County
Erik A. Christiansen, James T. Blanch, and Jeffrey J. Droubay, Salt Lake City, for Appellee Hartford Life & Accident Insurance Company

Before Judges Bench, Orme, and Davis.

BENCH, Judge:

Plaintiff Val M. Ellison appeals the trial court's grant of summary judgment in favor of Defendants Utah County (the County) and Hartford Life & Accident Insurance Company (Hartford). Plaintiff claims that statements made by the County and Hartford about the process for continuing his former wife's (the Deceased) life insurance policy (the Policy) led to the wrongful denial of death benefits following the Deceased's death.

"Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993) (citing Utah R. Civ. P. 56(c)). We give no deference to the trial court's determination to grant or deny summary judgment because such is a question of law, and we "view[] the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." Orvis v.

Johnson, 2008 UT 2, ¶ 6, 177 P.3d 600. However, we review the trial court's rulings on the admissibility of proffered evidence leading up to its ultimate grant or denial of summary judgment for an abuse of discretion. See Murdock v. Springville Mun. Corp. (In re Rights to Use of All Water), 1999 UT 39, ¶¶ 26-27, 982 P.2d 65 (holding that the trial court did not exceed its discretion in striking as inadmissible evidence proffered to oppose a motion for summary judgment); Gary Porter Constr. v. Fox Constr., Inc., 2004 UT App 354, ¶ 20, 101 P.3d 371 (construing rule 56(e) of the Utah Rules of Civil Procedure as requiring parties opposing summary judgment to do so with admissible evidence).

On appeal, Plaintiff argues that the trial court erred in granting summary judgment in favor of the County and Hartford on his fraud and estoppel causes of action, specifically claiming that he properly opposed the motions for summary judgment. However, the only proffered evidence that could be construed as proof of Plaintiff's damage was hearsay allegedly declared to Plaintiff by the Deceased about what should be done with proceeds from the Policy after her death. The trial court ruled that this hearsay evidence was inadmissible, and Plaintiff has failed to demonstrate that the trial court abused its discretion in so ruling. There is no admissible evidence from which a fact-finder could conclude or infer that the Deceased would have converted the Policy subsequent to the divorce and would have named her ex-husband as the beneficiary. As such, there is no admissible evidence of damage. The trial court therefore did not err in ruling, as a matter of law, that the County and Hartford were entitled to summary judgment.¹

The trial court did not specifically rule on the damages element of Plaintiff's negligence claim against the County.² As indicated above, the record demonstrates that Plaintiff failed to

¹In its order, the trial court also addressed Plaintiff's evidentiary deficiencies relating to the other elements of his fraud and estoppel causes of action. Because we affirm the trial court's decision based on its treatment of the damages element--an essential element to both fraud and estoppel claims--we do not discuss Plaintiff's arguments concerning the other elements. See Schafir v. Harrigan, 879 P.2d 1384, 1392-93 (Utah Ct. App. 1994) (affirming summary judgment where a party could not prove an essential element of its claim).

²The trial court's grant of summary judgment on Plaintiff's negligence claim rested on deficiencies concerning the breach of duty and causation elements.

produce any admissible evidence that the Deceased would have converted the Policy to an individual one and named Plaintiff as the beneficiary. Therefore, even if the trial court erred in ruling that Plaintiff failed to properly challenge the summary judgment motion with respect to the elements of breach and causation, we affirm the trial court on the alternative ground that Plaintiff failed to produce evidence of damages for his negligence claim. See Orton v. Carter, 970 P.2d 1254, 1260 (Utah 1998) (stating that an appellate court may affirm a lower court's order on any legal ground or theory apparent in the record, even if that ground was not the basis for the lower court's ruling).

The trial court also correctly granted summary judgment on Plaintiff's breach of contract claims against the County and Hartford. Plaintiff's claims that he was wrongly denied the proceeds of the Policy are conclusively rebutted by language in the Policy demonstrating that the Deceased, under the unambiguous dependent coverage provisions of the Policy, was not covered once she divorced Plaintiff. See Perkins v. Great-West Life Assurance Co., 814 P.2d 1125, 1129 (Utah Ct. App. 1991) (reversing and remanding for entry of summary judgment in favor of insurance company where, under the unambiguous language of the insurance contract, plaintiff did not qualify for coverage at the time of her death). Because the Deceased did not meet the definition of "Dependent" after the divorce and she never converted the Policy into one for which she would have been eligible, the trial court did not err in granting summary judgment on the breach of contract claims.

The unambiguous definition of the term "Dependent" also supports the trial court's grant of summary judgment on Plaintiff's breach of the covenant of good faith and fair dealing claim against Hartford. An insurance company does not breach its covenant of good faith when its denial of a claim is "fairly debatable." Prince v. Bear River Mut. Ins. Co., 2002 UT 68, ¶ 28, 56 P.3d 524; see also Saleh v. Farmers Ins. Exch., 2006 UT 20, ¶ 24, 133 P.3d 428 (restating the principle that when an insurer's denial of a claim is fairly debatable, it "cannot form the basis of bad faith"). Hartford denied Plaintiff's claim on the Policy because under the unambiguous and undisputed terms of the Policy, the Deceased did not qualify for coverage at the time of her death. Hartford's actions in denying the payment of benefits cannot therefore constitute bad faith, and the trial court correctly ruled that Plaintiff's claim of breach of the covenant of good faith and fair dealing failed as a matter of law.

For the foregoing reasons, we affirm the trial court's decision.

Russell W. Bench, Judge

I CONCUR:

James Z. Davis, Judge

I CONCUR IN THE RESULT:

Gregory K. Orme, Judge