COURT OF APPEALS
DECISION
DATED AND FILED

February 26, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal Nos. 03-0779
03-0780

Cir. Ct. Nos. 00CV000323
00PR000189

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

NO. 03-0779

REVEREND WILLIAM T. HOWIE AND FRANCES A. HOWIE,

PLAINTIFFS-APPELLANTS,

TRUSTMARK INSURANCE COMPANY,

INVOLUNTARY-PLAINTIFF-RESPONDENT,

V.

ESTATE OF ROBERT L. WEISENSEL,

DEFENDANT-RESPONDENT.

NO. 03-0780

IN RE THE ESTATE OF ROBERT L. WEISENSEL:

REVEREND WILLIAM T. HOWIE AND FRANCES A. HOWIE,

APPELLANTS,

V.

ESTATE OF ROBERT L. WEISENSEL,

RESPONDENT.

APPEAL from an order of the circuit court for Columbia County: JAMES MILLER, Judge. *Affirmed*.

Before Deininger, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Reverend William T. Howie and his mother, Frances A. Howie, (the Howies) appeal from an order dissolving the estate of Robert Weisensel and, because of the dissolution of the estate, dismissing their personal injury complaint against the estate. Because the estate had minimal assets and its liabilities exceeded those assets, we conclude that summary settlement of the estate under WIS. STAT. § 867.01(1)(a) (2001-02)[1] was proper. Therefore, we affirm.[2]

¶2 The Howies were seriously injured in an automobile accident caused by the negligence of Robert Weisensel. Weisensel was killed in the accident.

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[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

[2] While this litigation was pending in the circuit court, the estate moved to disqualify counsel for the Howies for a conflict of interest. The circuit court declined to rule on the estate's motion because the dismissal rendered the motion moot. The estate made a similar motion to disqualify counsel at the completion of the briefing schedule. Like the circuit court, our decision renders the motion moot, and we decline to address it further.

Weisensel was insured by Allied Property and Casualty Insurance Company. On November 10, 2000, the Howies filed a summons and complaint seeking damages from Weisensel's estate and Allied. On March 13, 2001, Allied petitioned for leave to pay its policy limits to the court and asked to be dismissed. The court accepted Allied's tender and dismissed Allied with prejudice, noting that payment of the policy limits "shall be deemed to have satisfied [Allied's] indemnity obligations …."

¶3 Thereafter, the special administrator petitioned for summary settlement of the estate. The petition stated that, at the time of his death, Weisensel owned only his car, which was totaled in the accident, and furniture valued at $100. As claims against the estate, the petition listed medical bills totaling between $20,000 and $30,000 and the Howies' personal injury claim. The Howies objected to summary settlement, arguing that the petition did not account for a bad faith claim that the estate may have against Allied. From the Howies' perspective, the special administrator for the estate was obliged to accept their settlement offer of nearly $2,000,000. The Howies' plan was to enter judgment against the estate for the settlement amount, and in satisfaction of the judgment, take an assignment of the estate's bad faith claim against Allied.

¶4 The circuit court rejected the Howies' position. The court noted that no bad faith claim existed at that point in time. The Howies' claim against the estate was a liability, and the estate had no assets from which it could pay that claim, or the claim of any other creditor. The court observed that the special administrator's first duty is to the estate, and in this instance, the estate had no money to defend itself against the Howies' claim and that any judgment against the estate would go unsatisfied. Even if a judgment in excess of the policy limits existed, the court stated that such a judgment does not automatically give rise to a

valid bad faith claim against Allied. In sum, the court concluded that summary settlement under WIS. STAT. § 867.01 was warranted.

¶5 Under WIS. STAT. § 867.01(1)(a), an estate shall be summarily settled whenever the debts of an estate exceed assets.[3] The petition showed that Weisensel's debts far exceeded his assets. The Howies' contention that summary settlement should not have been ordered stems from their belief that the petition omitted an asset, namely, a bad faith claim against Allied. That contention, however, is both factually and legally speculative and, therefore, it does not support the Howies' claim of error.

¶6 A special administrator owes a duty of loyalty to the estate and he or she must "not be motivated … [by] the interest of third parties." ***Robert Hill Found. v. Learman***, 30 Wis. 2d 116, 121, 140 N.W.2d 196 (1966). Therefore, the special administrator of Weisensel's estate was under no obligation to accept a settlement offer that would lead to a significant judgment against the estate. Without such a judgment, no bad faith claim exists. *See e.g.,* ***Kranzush v. Badger State Mut. Cas. Co.***, 103 Wis. 2d 56, 60-61, 307 N.W.2d 256 (1981).

¶7 An insurer has a duty to exercise good faith in the settlement of a claim. ***Id.*** at 60. However, that duty extends to the insured, not to a third party. ***Id.*** at 72. Therefore, Allied's duty ran only to the estate, and it did not owe any duty to the Howies to settle or negotiate a claim in good faith. The record shows that Allied promptly paid its policy limits to the court. As recognized by the

[3] WISCONSIN STAT. § 867.01(1)(a) provides, in pertinent part, that "[t]he court shall summarily settle the estate of a deceased person … [w]henever the estate, less the amount of the debts for which any property in the estate is security, does not exceed in value the costs, expenses, allowances and claims under s. 859.25(1)(a) to (g)."

circuit court, the payment satisfied Allied's indemnity obligation arising from the accident. The inadequacy of the policy limits to completely compensate the Howies for their injuries is not equivalent to bad faith on the part of Allied.

¶8 Contrary to the Howies' belief, the estate had no bad faith claim against Allied. Therefore, the estate did not improperly omit any asset in the petition for summary settlement. Because the debts of the estate far exceeded assets, summary settlement under WIS. STAT. § 867.01(1)(a) was proper.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.