

Summary of SC95083, *Brittany Hunter v. Charles Moore Sr.*

Appeal from the St. Louis circuit court, Judge David L. Dowd
Argued and submitted January 13, 2016; opinion issued April 19, 2016

Attorneys: Moore was represented by Susan Ford Robertson and J. Zachary Bickel of The Robertson Law Group LLC in Kansas City, (816) 221-7010, and Cheryl A. Callis and Kenneth M. Lander of Korten Hof McGlynn & Burns LLC in St. Louis, (314) 621-5757. Hunter was represented by Michael W. Manners of Langdon & Emison in Lexington, (660) 259-6175; Joseph F. Yeckel of the Law Office of Joseph F. Yeckel in St. Louis, (314) 727-2430; and Matthew P. O'Grady of the O'Grady Law Firm LLC in St. Louis, (314) 621-7989.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals the trial court's judgment finding that he would not allow his insurer to control his defense of a negligence lawsuit filed against him and that he would cooperate with the plaintiff in that action either by agreeing to a consent judgment (a judgment enforcing the terms of a settlement agreement) or having an uncontested hearing regarding liability and damages. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment as modified. The evidence is sufficient to show the parties intended to include the disputed terms in their written agreement but, due to mutual mistake, failed to do so. To the extent the judgment requires the man to cooperate by agreeing to a consent judgment, the parties agree on appeal this never was their intent, and so the judgment is modified to remove that requirement.

Facts: Brittany Hunter filed negligence claims against Delta Motel and its manager, Charles Moore Sr., for injuries she sustained while staying at the motel. Delta and Moore demanded that the company that had issued a liability insurance policy to the motel defend them against Hunter's claims. The insurer notified Moore it would defend him under a reservation of rights (an assertion that it was not required to defend him) and then filed a separate lawsuit against both Moore and Delta seeking a judgment declaring that it had no duty to defend or indemnify them under its policy. Moore hired an attorney to represent him in the insurance case and told the insurer that, if it did not withdraw its reservation of rights and dismiss him from the declaratory judgment action, he would consider entering into an agreement with Hunter pursuant to section 537.065, RSMo (which permits certain claimants and alleged wrongdoers to contract to limit recovery of any damages to specified assets or the limits of an insurance contract). The insurer responded by offering Moore a full defense and indemnification and promising to dismiss him from the declaratory judgment action. Despite these assurances, the insurer did not dismiss Moore and moved for summary judgment (judgment on the court filings, without a trial) against both Moore and Delta. Moore and Hunter then entered into negotiations via e-mail and telephone and reached an agreement pursuant to section 537.065. The written agreement was silent as to whether or how Moore was to cooperate with Hunter in her negligence suit. Because the parties disputed some of the terms of the agreement, Hunter sued Moore for breach of contract, seeking specific enforcement of the agreement and reformation of the written agreement to reflect their true intentions. The trial court heard evidence regarding whether the agreement was enforceable

and whether it required Moore to cooperate with Hunter in her negligence case. The court entered judgment for Hunter, finding she had proven that the parties mutually agreed that Moore would not allow the insurance company to control the defense of the underlying negligence action and that he would cooperate with her in that action either by agreeing to a consent judgment or having an uncontested hearing regarding liability and damages. Moore appeals.

AFFIRMED AS MODIFIED.

Court en banc holds: There is sufficient evidence in the record to support the trial court's finding that Hunter and Moore agreed to the disputed terms before signing their written agreement but that, due to a mutual mistake, they failed to reduce those terms to writing. Reformation is an extraordinary remedy and should be granted only in clear cases of fraud or mistake. The party seeking reformation must prove by clear, cogent and convincing evidence the existence of an actual, preexisting agreement and a mutual mistake the parties made to the agreement.

(1) The record provides sufficient evidence that it was the parties' mutual intent that the insurance company no longer would control the defense in Hunter's negligence action. The trial court found more credible the testimony of Hunter's attorney than that of Moore's attorney regarding this issue. Further, on the same day Moore signed the written agreement, his attorney sent the insurer a letter accusing the insurer of breaching the insurance contract, advising the insurer that Moore had entered into an agreement pursuant to section 537.065 and instructing the insurance company's attorney to withdraw from representing Moore in Hunter's negligence lawsuit. Attorneys for Moore and Hunter later exchanged e-mails in which they expressed their disbelief that the insurer's attorney had failed to withdraw after receiving the letter from Moore's attorney. The letter and e-mails show that not only Hunter but also Moore intended for the settlement agreement to include this disputed issue.

(2) The record also provides sufficient evidence that it was the parties' mutual intent that Moore would cooperate in that case by having an uncontested hearing regarding liability and damages. The trial court relied in part on the testimony of the attorneys and a provision in the written agreement that the parties specifically considered two particular cases that discuss the options of insurers and insureds when coverage of a claim against an insured is in dispute. In its judgment, the trial court reformed the written agreement to require Moore to cooperate with Hunter in her underlying negligence action either by agreeing to a consent judgment or by having an uncontested hearing regarding liability and damages. Both parties agree on appeal that they never intended for Moore to enter a consent judgment. Rule 84.14 permits this Court to enter the judgment as the trial court ought to have entered it. Accordingly, the portion of the judgment requiring Moore to cooperate in the underlying action is modified to require only that Moore cooperate by having an uncontested hearing regarding liability and damages.