



In the Missouri Court of Appeals Eastern District

DIVISION TWO

MICHAEL SCOBEE AND	)	No. ED108712
LINDA SCOBEE,	)	
	)	
Plaintiffs/Respondents,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
LAUREN NORRIS, as Defendant Ad Litem	)	Honorable Richard M. Stewart
for WILLIAM NORRIS,	)	
	)	
Defendant/Appellant.	)	Filed: February 16, 2021

Introduction

Lauren Norris, as Defendant Ad Litem acting of behalf of decedent William Norris (Appellant), appeals from the judgment of the trial court denying her motion to amend the judgment entered upon the jury's verdict. We affirm.

Factual and Procedural Background

Michael Scobee and Linda Scobee (Respondents) brought an action against William Norris (Decedent) for personal injuries resulting from a motor vehicle accident which took place on April 4, 2015. Decedent died on March 16, 2018. Seth Gausnell was appointed to act on behalf of Decedent as defendant ad litem. However, on September 20, 2019, three days before the jury trial, Lauren Norris, Decedent's widow, was substituted as defendant ad litem over Respondents' objection.

The trial lasted four days. Before the jury returned its verdict, Appellant informed the court of Decedent's relevant liability policy with USAA Insurance Company (USAA). Appellant also notified the court that she was going to request that any jury award be reduced to the policy limit, which Appellant claimed was \$100,000. The trial court took no further action at the time and indicated it would consider the issue post-trial.

On September 27, 2019, the jury returned its verdict for Respondents, assessing total damages at \$7 million. Citing section 537.021,¹ Appellant requested the judgment be reduced to Decedent's policy limit with USAA. The trial court denied Appellant's request and entered judgment on October 10, 2019. Appellant then filed a motion for new trial and an alternative motion to amend the judgment to reduce the award of damages to the insurance policy limit. Both motions were denied.

This appeal follows.

Section 537.021.1

Section 537.021.1 was created "to simplify [the] burdensome procedure of normal estate administration in cases where there was no probate estate and the liability insurer was the 'real defendant.'" State ex rel. Gannon v. Gaertner, 592 S.W.2d 214, 216 (Mo. App. E.D. 1979). "The purpose of using 'real defendant' is to recognize, pursuant to section 537.021, the defendant ad litem is not defending any assets of an estate that decedent may have left behind, and is not personally liable for damages." Morgan v. State Farm Fire & Cas. Co., 344 S.W.3d 771, 778 n.11 (Mo. App. S.D. 2011). The defendant ad litem serves as the deceased's legal representative, taking the place of the formerly required administrator. Id. Section 537.021.1 states:

1. The existence of a cause of action for an injury to property, for a personal injury not resulting in death, or for wrongful death, which action survives the death of the

¹ All statutory references are to RSMo 2000 unless otherwise indicated.

wrongdoer or the person injured, or both, shall authorize and require the appointment by a probate division of the circuit court of:

...

(2) A personal representative of the estate of a wrongdoer upon the death of such wrongdoer; provided that, if a deceased wrongdoer was insured against liability for damages for wrongdoing and damages may be recovered from the wrongdoer's liability insurer, then the court in which any such cause of action is brought shall appoint at the request of the plaintiff or other interested party a qualified person to be known as a defendant ad litem. The defendant ad litem when so appointed shall serve and act as the named party defendant in such actions in the capacity of legal representative of the deceased wrongdoer and such appointment and any proceedings had or judgment rendered in such cause after such appointment shall be binding on the insurer of such deceased wrongdoer to the same extent as if a personal representative had acted as the legal representative of such deceased wrongdoer in such cause of action. Should the plaintiff in such cause of action desire to satisfy any portion of a judgment rendered thereon out of the assets of the estate of such deceased wrongdoer, such action shall be maintained against a personal representative appointed by the probate division of the circuit court and the plaintiff shall comply with the provisions of the probate code with respect to claims against decedents' estates. Nothing in this section shall be construed to permit a plaintiff in such cause of action to pursue other assets of a decedent's estate after the expiration of the time provided in section 473.444.

Section 537.021.1 lists two ways to recover against a deceased wrongdoer. First, the court may appoint a defendant ad litem the plaintiff can then attempt to recover against. Id. Significantly, the defendant ad litem is tasked with representing the interests of the deceased wrongdoer and the plaintiff can only recover against the deceased wrongdoer's liability insurance. Id. Second, a plaintiff can recover against both the deceased wrongdoer's estate and his liability insurance, as long as the plaintiff takes certain actions. Id. Here, both parties agree this case deals with only the first option—recovery against the deceased wrongdoer's liability insurance.

Points Relied On

Appellant raises two points on appeal. In her first point, Appellant claims the trial court erred by failing to reduce the jury's award to Decedent's policy limit with USAA. In her second point, Appellant claims the trial court erred in denying her motion to amend the judgment

because Respondents are limited to USAA's policy limit and therefore unable to collect under a future bad faith claim.

Standard of Review

The facts surrounding this matter are not disputed. Instead, Appellant claims the trial court erred in its interpretation and application of section 537.021, when it refused to reduce the jury's award to Decedent's alleged insurance policy limit and refused to amend the judgment to disallow any potential award under a bad faith claim. "The interpretation of a statute is a question of law and is reviewed *de novo*" Dodson v. Ferrara, 491 S.W.3d 542, 551 (Mo. banc 2016).

This Court resolves ambiguities in statutes by determining the intent of the legislature and by giving effect to its intent whenever possible. In determining legislative intent, no portion of a statute is read in isolation, but rather is read in context to the entire statute, harmonizing all provisions. This Court may apply rules of statutory construction to resolve any ambiguities if the legislative intent is undeterminable from the plain meaning of the statutory language. Further, construction of a statute should avoid unreasonable or absurd results.

Aquila Foreign Qualifications Corp. v. Dir. of Revenue, 362 S.W.3d 1, 4 (Mo. banc 2012)
(internal citations omitted).

Award Reduction Pursuant to Section 537.021

Discussion

Appellant claims the trial court erred by failing to reduce the jury's award to Decedent's alleged policy limit with USAA. Appellant is advocating on behalf of USAA for the trial court to reduce the jury's award from \$7 million to \$100,000, arguing Respondents cannot collect from Decedent's estate and can only collect up to Decedent's policy limit from USAA. We disagree with Appellant's claim for several reasons.

Section 537.021 simplifies and streamlines the procedure for collection in state cases focusing solely upon liability insurance coverage. Morgan, 344 S.W.3d at 777-78. However, section 537.021 does not contain any language suggesting the court should modify a jury award based on the defendant's alleged insurance policy limits. In fact, the question of damages in a plaintiff's tort claim is separate and distinct from the later question of recovering against an insurer under a liability policy. Id. at 778. "If coverage is a disputed fact, it would ordinarily be decided after judgment during enforcement of judgment proceedings." McConnell v. Kelly, 860 S.W.2d 362, 364 (Mo. App. E.D. 1993).

Nonetheless, Appellant attempts to support her argument by referencing legislative history and secondary sources that state a judgment against a defendant ad litem will bind the insurer and be the only available source of recovery. See, e.g., 34 Mo. Prac., Personal Injury and Torts Handbook § 2.14.1(f) (2020). Relying on these statements, Appellant argues the court must limit Respondents' recovery to Decedent's policy limit with USAA because the insurance policy is the only available source of recovery. However, Appellant incorrectly assumes the statute requires resolution of coverage issues in Respondents' damages action, and her argument impermissibly intermingles the roles of a defendant ad litem and insurer.

We have previously addressed the distinction between insurers and defendants ad litem. McConnell, 860 S.W.2d 362. In McConnell, the deceased wrongdoer's insurer, Universal, was appointed as defendant ad litem pursuant to section 537.021.1(2). Id. at 363. Upon a challenge to the propriety of the appointment, the trial court held appointing Universal was proper under section 537.021. Id. However, this Court disagreed, holding that Universal was not an appropriate defendant ad litem because of its conflicting role as the deceased wrongdoer's insurer. Id. at 364. Specifically, we stated "Universal, as defendant ad litem, has an obligation to

claim and prove coverage on behalf of [the deceased wrongdoer]. As an insurer of co-defendants, it may have contra obligations.” Id. Moreover, we explained that Universal was not before the court in its role as an insurer. Therefore, a “final judgment on coverage, binding upon Universal, could not be made on a motion filed by Universal as defendant ad litem.” Id.

Here, as a defendant ad litem, Appellant has a duty “to demand coverage and claim and prove agency.” Id. On the other hand, USAA, as Decedent’s insurer, has its own interests in denying or minimizing its liability. Thus, by seeking to reduce the verdict, Appellant is no longer acting on behalf of Decedent as is required under section 537.021 and is instead advancing the interests of USAA.

Additionally, USAA is not a party and has not been before the court in this action. Therefore, a final, binding judgment on coverage cannot be made based on Appellant’s motion. Id. See also Morgan, 344 S.W.3d at 778 (“Nothing in [section 537.021] indicates the appointment of the defendant ad litem is binding as to the existence of insurance coverage.”). Decedent’s policy limit has not been conclusively established, and as set forth in McConnell, we will not litigate underlying issues of coverage in this tort action.

Point I is denied.

The Availability of Bad Faith Claims

Appellant further claims the trial court erred by failing to amend the judgment because Respondents are not legally entitled to recover for bad faith claims. We disagree with Appellant’s claim for several reasons.

First, as discussed above, Appellant improperly attempts to bring issues of insurance coverage and collections into an action for damages involving a defendant ad litem. Whether

Decedent is liable to Respondents for their personal injuries and whether USAA may be liable for having acted in bad faith during settlement discussions are two distinct questions.

Additionally, a bad faith claim has not been raised in this matter and any ruling upon a potential bad faith claim would merely be advisory and not ripe. Reeves v. Kander, 462 S.W.3d 853, 857 (Mo. App. W.D. 2015). “Ripeness is a ‘tool’ of the court, which is used to determine whether a controversy is ‘ripe’ or ready for judicial review, or whether by conducting the review, we would simply be rendering an advisory opinion on some future set of circumstances, which we are not permitted to do.” Id. The Missouri Supreme Court has stated:

Even when a party has standing, however, the claims must also be ripe, which requires the dispute to be ‘developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that is presently existing, and to grant specific relief....’ A claim is not ripe for adjudication if it ‘rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.’

Geier v. Missouri Ethics Comm’n, 474 S.W.3d 560, 569 (Mo. banc 2015), quoting Texas v. United States, 523 U.S. 296, 300 (1998). Because “[w]e cannot and do not render advisory opinions,” it would be improper for us to rule upon a bad faith claim that has yet to be filed. See Matter of Estate of Van Cleave, 574 S.W.2d 375, 376 (Mo. banc 1978).

Point II is denied.

Conclusion

The judgment of the trial court is affirmed.



SHERRI B. SULLIVAN, J.

Robin Ransom, P.J., and Lisa P. Page, J., concur.